DOCUMENT RESUME

ED 275 271 HE 019 787

AUTHOR Julius, Daniel J., Ed.
TITLE Collective Bargaining in Higher Education. The State of the Art.
INSTITUTION College and Univ. Personnel Association, Washington, D.C.
PUB DATE 84
NOTE 182p.
AVAILABLE FROM College and University Personnel Association, 11 Dupont Circle, Suite 120, Washington, DC 20036-1250.
PUB TYPE Collected Works - General (020) -- Viewpoints (120)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Administrator Role; *Arbitration; *Collective Bargaining; College Faculty; College Presidents; Contracts; *Employment Practices; Grievance Procedures; *Higher Education; Multicampus Colleges; Negotiation Agreements; Personnel Policy; School Personnel; State Universities; Strikes; Teaching Hospitals; Trustees; *Unions

ABSTRACT

American higher education collective bargaining is addressed in 21 essays by administrators and academicians who are actively engaged in the process. Titles and authors are as follows: "The Context of Collective Bargaining in American Colleges and Universities" (Kenneth P. Mortimer); "Collective Bargaining in the Multi-Campus System" (Richard E. Bjork); "The Role and Function of Trustees and Presidents" (David J. Figuli); "Managing Collective Bargaining with Non-Faculty Personnel" (Joan Geetter); "The Impact of Collective Bargaining on Physical Plant Management" (Jack Hug); "Collective Bargaining in University Teaching Hospitals" (William J. Neff); "The Collective Bargaining Process and the Potential for Productive Outcomes" (Ray A. Howe); "Preparation for Collective Bargaining in Higher Education" (Allan W. Drachman, Naomi R. Stonberg); "The Importance of Setting Bargaining Objectives" (Gary W. Wulf); "Strike Management in Higher Education" (Gregory L. Kramp); "'The Commandments' for Management Labor Negotiators" (John F. O'Hara); "Dispute Resolution: Making Effective Use of the Mediation Process" (Margaret K. Chandler); "Mediation in the Resolution of Collective Bargaining Disputes" (Ira B. Lobel); "Guidelines for Handling Grievances at the Formal Level" (Jacob M. Samit); "The Preparation of Labor Arbitration Cases" (Nicholas DiGiovanni, Jr.); "Arbitration Selection" (Thomas D. Layzell); "Administrative Responsibilities for Labor Relations Decisions" (David Kuechle); "Effective Contract Administration" (Daniel J. Julius); "How to Organize the Administration of a Multi-Campus System for Bargaining" (Caesar J. Naples); "The California Experience: An Unusual Law, Institution, and Approach" (Thomas M. Mannix); and "Collective Bargaining with Public University Employees: Before and After Enabling Legislation" (Sandra L. Harrison). (SW)

ED275271

HE019789

"PERMISSION TO REPRODUCE THIS MATERIAL IN **MICROFICHE ONLY** HAS BEEN GRANTED BY

CUPA

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

© Copyright 1984 by the College and University Personnel Association. All rights reserved.

CUPA

The College and University Personnel Association is an international network of some 4,000 personnel administrators representing about 1,200 colleges and universities. Through regular and special publications and studies, CUPA aims to keep its members informed of the latest legal, legislative, and regulatory developments affecting personnel administration, as well as trends and innovative policies and practices in the field. Services include a weekly newsletter, a quarterly journal, an annual conference, regional meetings, and seminars on timely topics of special interest to the personnel profession. For membership information, contact Sandy Shapiro, CUPA, Eleven Dupont Circle, Suite 120, Washington, DC 20036, (202) 462-1038.

Other books published by the College and University Personnel Association include:

1983-84 Administrative Compensation Survey

1984 Compensation and Benefits Survey of College and University Chief Executive Officers

1983-84 National Faculty Salary Survey by Discipline and Rank in Private Colleges and Universities

1983-84 National Faculty Salary Survey by Discipline and Rank in State Colleges and Universities

Assessing Management Information System Alternatives

Attendees and Attendants

College and University Personnel Policy Models

Employment-At-Will: A Personnel Director's Guide

Essential Personnel Practices

Good Endings: Managing Employee Terminations

Guide to the Employment of Aliens

Higher Education Personnel Forms

Interview Guide for Supervisors, *revised edition*

Performance Appraisal: An Investment in Human Capital

Personnel Program Appraisal Workbook

Sexual Harassment: An Employment Issue

Women and Minorities in Administration of Higher Education Institutions 1978-79

Women and Minorities in Administration of Higher Education Institutions 1975-76

The above titles are available from the College and University Personnel Association,
11 Dupont Circle, Suite 120, Washington, DC 20036, (202) 462-1038.

Foreword

The College and University Personnel Association (CUPA) is especially pleased to have provided the support for the publication of Collective Bargaining in Higher Education: The State of the Art. The primary intention of this book is to present a collection of essays on the subject of American higher education collective bargaining, written by exceptionally effective administrators and academicians. The selections focus on issues and experiences that will serve as guides to those who are actively engaged in campus collective bargaining, to those who desire an overview of the subject area, and to students of the process.

CUPA is most appreciative of the leadership efforts of Dr. Daniel J. Julius, Director of Employee Relations, The California State University System Office, for initiating and developing this publication and serving as its editor. Dr. Julius' adept pragmatic and scholarly insights, coupled with his commitment to more effective human resource management, have resulted in a book that will serve as a standard for future CUPA publications.

CUPA is indebted to the many authors who are sharing their professional and personal insights into American higher education collective bargaining. Their lucid, learned, and practical contributions have truly made this book a state-of-the-art publication. We appreciate the time and effort they put forth.

Stephen S. Miller
CUPA
Executive Director
August 1984

Acknowledgements

That one can be a good practitioner and also engage in academic pursuits is amply illustrated in this volume. The effort and time expended by the authors is gratefully acknowledged.

Two individuals in particular deserve praise: Ms. Gloria W. White, Associate Vice Chancellor, Washington University and Dr. Stephen S. Miller, Executive Director, College and University Personnel Association. Without their support this project could not have come to fruition.

The editor also wishes to thank Ms. Carin L. Luke, Managing Editor, Ms. Shirley Thomas, Editorial Assistant, and Ms. Deborah Reese, Publications Assistant, College and University Personnel Association; Mr. Thomas M. Mannix, Director of Collective Bargaining Services, University of California; Dr. Arline Julius, Professor, Baruch College, City University of New York; Mr. Gary Lebowich, Employee Relations Specialist, California State University; and Ms. Lynn Hunter, Long Beach, California for their assistance in the preparation of this volume.

Table of Contents

PAGE

Preface i

The Authors vii

PART ONE: Collective Bargaining and University Administration 1

The Context of Collective Bargaining in American Colleges and Universities 3
Kenneth P. Mortimer

Collective Bargaining in the Multi-Campus System 13
Richard E. Bjork

The Role and Function of Trustees and Presidents 27
David J. Figuli

Managing Collective Bargaining with Non-Faculty Personnel 34
Joan Geetter

The Impact of Collective Bargaining on Physical Plant Management 40
Jack Hug

Collective Bargaining in University Teaching Hospitals 50
William J. Neff

PART TWO: Managing the Negotiations Process 55

The Collective Bargaining Process and the Potential for Productive Outcomes 57
Ray A. Howe

Preparation for Collective Bargaining in Higher Education 66
Allan W. Drachman
Naomi R. Stonberg

The Importance of Setting Bargaining Objectives 72
Gary W. Wulf

Strike Management in Higher Education 77
Gregory L. Kramp

"The Commandments" for Management Labor Negotiators 85
John F. O'Hara

PART THREE: Mediation 87

Dispute Resolution: Making Effective Use of the Mediation Process 89
Margaret K. Chandler

Mediation in the Resolution of Collective Bargaining Disputes 94
Ira B. Lobel

PART FOUR: The Administration of the Contract 101

Guidelines for Handling Grievances at the Formal Level 103
Jacob M. Samit

The Preparation of Labor Arbitration Cases 107
Nicholas DiGiovanni, Jr.

Arbitration Selection 118
Thomas D. Layzell

Administrative Responsibilities for Labor Relations Decisions 126
David Kuechle

Effective Contract Administration 137
Daniel J. Julius

PART FIVE: Selected State Experiences 141

How to Organize the Administration of a Multi-Campus System for Bargaining 143
Caesar J. Naples

The California Experience: An Unusual Law, Institution, and Approach 149
Thomas M. Mannix

Collective Bargaining with Public University Employees: Before and After Enabling Legislation 162
Sandra L. Harrison

Preface

THE SCOPE OF THIS BOOK

Few events have received the attention or scrutiny that collective bargaining in higher education has received. An enormous quantity of written material is available on the topic.[1] With few exceptions, however, faculty unionization is what is examined. Much of this literature is not pertinent to the needs of the practitioner.

This volume is different. It comprises selections written by administrators or, in several instances, by scholars who possess insight into the world of the practitioner. The authors are responsible for, or integrally part of the collective bargaining process for academic and support staff at their institutions. Their writings elucidate the continuing effect of employee unions, particularly those comprised of support staff, on human resource management in public and private institutions of higher education.

The selections are grouped into five sections: Collective Bargaining and University Administration, Managing the Negotiation Process, Mediation, The Administration of the Contract, and Selected State Experiences. Attention is directed to "what works" and the how-to of collective bargaining. The faculty person as "manager", a role thrust upon faculty when non-academic employees unionize, is examined. The contributions on bargaining preparation and contract administration in selected state systems are of interest. The information should be of value to practitioners in states where enabling public sector legislation, a harbinger of collective bargaining, is imminent.

This is not a collection of philosophical treatises or a compilation of monographs on the appropriateness of unions in academe. An effort was made to strip away such varnish and to focus on what actually exists and how best to manage in a unionized environment. Nor will this book offer assistance on how-to-beat-the-union. It follows, in a similar vein, a volume entitled *The Handbook of Faculty Bargaining*. That book focused on the brighter side of collective bargaining and the needs of the parties.[2]

Collective bargaining in higher education is not a passing craze. It has become a permanent fixture in American higher education. The desire to be represented by an exclusive bargaining agent has been fulfilled by a majority of support staff and by academic employees in 25 percent of American colleges and universities. When actual numbers are examined, nearly one-half of the professoriate bargains collectively.[3]

In unionized institutions and systems, collective bargaining has a pronounced effect on higher education management. It is also apparent that the strategies, tactics, and processes associated with collective bargaining and contract administration for support staff are appropriate for academic personnel. That faculty and support staff (and, unfortunately, their administrative counterparts) have difficulty addressing their work-related concerns in a like manner obfuscates the underlying commonality of the issues. Particularly in organizations where faculty and support staff units exist, the fundamental characteristics, outcomes, and challenges of collective bargaining are very similar. The old quip about the difference between bargaining with academic and staff unions, that the faculty can trade academic freedom for 2 percent, still elicits smiles from practitioners. In any event, today's human resource administrator cannot be effective without a rudimentary knowledge of labor relations. In many institutions, greater expertise is required. This volume will help provide this expertise.

The Unionization of Faculty: A Brief Overview

In the wake of elections ushering in faculty unions at several public community colleges in Michigan and then the City University of New York in the late 1960's, scholars noted that the reconciliation of faculty unionism with an idealized concept of academic mission would be moot. Collective bargaining, it was observed, was relegated to the lower tiers of academe. Ladd and Lipset reported that the least professional sector is the most supportive of faculty unions.[4] The major centers of research and scholarship would never vote for bargaining agents. This view held that professional authority would thus be safeguarded. "Let the community college faculties organize, it will never happen here," was the common attitude. Collegiality, a term richly endowed and one that demands solemnity and adoration from the faithful, was deemed antithetical to the precepts of unionization. The literature on higher education continued to pay homage to models of shared governance, like cardinals washing the feet of the poor at Easter in imitation of Christ.

Fifteen years after these successful organizing drives, the assumption that quality and collegiality mitigate the need or desire for unionization must be questioned. Take, for example, the case of academic employees. Mythology has it that the most prestigious schools have faculties comprised largely of academic entrepreneurs, who are independently funded by grants and thus have no need for a union as an agent to control the work environment. In reality, the factor that enables the faculty member to reject unionism is not prestige per se, but the independence that prestige affords and the ability to contol one's environment that goes with that independence. Forgotten is the fact that, even in the most prestigious schools, the number of academic entrepreneurs has been and remains small. Their way of life is not typical of the majority of faculty members at even the best universities and colleges. The mass of faculty, with a few exceptions, are locked in and dependent on the institution.

This is not to infer that collegial sentiments are non-existant, only that several factors prevent them from playing a determining role in the decision to unionize. Structural factors are a prime example. A "research culture" theory is of little consequence if non-teaching professionals are placed in the bargaining unit. Similarly, if the flagship university is included in the system-wide unit, faculty with elite orientations will be outnumbered when the voting commences. Faculty in elite institutions may be attitudinally less receptive to unions, but intervening variables prevent the transference of such attitudes into behavior. In fact, where elitist sentiments and shared decision-making exist, they may be nurtured by employee unions once the decision to unionize is made. Faculty unions are as pragmatic as their industrial counterparts. For example, support for the academic senate and institutional processes associated with shared governance can be wise and pragmatic, even self serving. Unless evisceration of the senate is an objective, no union leader would care to witness his or her constituency warring over academic standards or curricular matters, or would attempt bargaining standards for review that are of extreme importance to the senate—without the understanding or support of senate leaders. No union leader can ignore a management that insists on maintaining an open and effective liaison with the senate.[5]

The above not withstanding, it is a complex task to characterize the motive for faculty unionization, or, more important, to identify what kind of movement the organized professoriate represents. Academic labor unions travel light ideologically and will swap goods with just about anyone. Wilfred Sheed's observation that American labor, "is on one hand an act of faith, and on the other, a thousand small movements rowing vigorously in their own directions" also characterizes the union movement in higher education.[6]

Predictors of Collective Bargaining

The key explanatory predictors of unionism in higher education are institutional and demographic variables, e.g., organizational size and growth, affiliation (public vs. private), regional characteristics (urban vs. rural), the presence of competing unions or bargaining agents, prior acceptability of public employee unionism, and enabling public sector legislation.[7]

Larger campuses and/or emerging institutional systems are prone to have collective bargaining. Private colleges and universities in transition are also susceptible to unionization. The real action today is in the larger public two-year college systems and research universities in the midwest and far west. At the University of California at Berkeley and Los Angeles a first attempt at faculty unionization was voted down by exceedingly narrow margins.[8]

Faculty unionism is not a unique phenomenon. Parallels exist between the actions and organizational behavior of craft unions in the industrial sector and academic unions. Many in academe, however, continue to insist their situations are different from those in the industrial sector. Faculty bargaining agents, both in terms of their organizational campaigns and negotiated agreements, are also similar. Where actual higher education contracts are examined, the "agent" variable is not a powerful predictor of the assertion of administrative or faculty rights in areas such as appointment, promotion, reappointment, tenure, retrenchment, and long-range planning.[9]

Interestingly, bargaining agreements negotiated by mergers of competing agents or by independent agents, although small in number, cover a substantial group of faculty in large, public, multi-campus systems. For example, faculty at the City University of New York, State University of New York, Pennsylvania State College System, California State University, and University of Hawaii are represented by mergers of bargaining agents. Economic and political necessities will probably engender more such arrangements in the future. Faculty unions, regardless of affiliation, show a proclivity for aligning themselves with local power structures and, when necessary, with competing unions.[10]

The Public vs. the Private Sectors

Although faculty in public two-year institutions were the first to embrace collective bargaining, by 1981 65 percent of all unionized faculty worked in four-year institutions. Presently, over 400 recognized agents bargain for faculty at 850 campuses.[11] Public college and university systems in Maine, Vermont, Massachusetts, New York, Connecticut, New Jersey, Pennsylvania, and Florida are entirely unionized. With the exception of flagship schools, public colleges and universities in Rhode Island, New Hampshire, Ohio, Michigan, Wisconsin, Illinois, Iowa, Minnesota, Montana, Oregon, California, and Hawaii are organized. Should severe reductions in postsecondary education funding occur, or should enabling public sector legislation be passed in Maryland, Washington, Wisconsin or Texas, employees in four-year schools in these states may also become organized.

During the last decade, the national educational growth pattern reversed itself. Massive boom gave way to inflation and financial cutbacks; enrollment declined. Private universities and colleges of lesser prestige were particularly hard hit. These institutions, which had hurried to erect new buildings and hire additional faculty, experienced a precipitous drop in external funding. In the wake of these events, faculty at schools like Hofstra, Adelphi, the Universities of Bridgeport and Scranton, and Ashland and Wagner Colleges correctly perceived a shift in academic decision-making from faculty-oriented offices to financial offices. These professional employees soon discovered that they were the only major unorganized block on campus. Hence, unlike the plant maintenance personnel and the secretaries, the faculty, until it unionized, was forced to lobby for its interests as concerned individuals rather than as an organized group.

The lion's share of bargaining continues to occur in public two-year and four-year colleges. Although legalistic and political factors can affect the outcome of a vote for a bargaining agent in either sector, unique differences exist between these institutions. First, the union must move out from under the secure umbrella of state public employment legislation and state agencies. It must now operate under the National Labor Relations Act and under the National Labor Relations Board, not always a welcome prospect. Then too, when the chips are down, private school faculty may see for the first time that the options available to organized public and private faculties are not the same. For instance in cases of financial exigency, private school faculties, even when organized, are faced with responding to a specific situation, and responding quite alone. In states with enabling public sector legislation, however, individuals from public institutions can join with other public employee unions at the state capital in the hope that weary and vote-hungry politicians will eventually succumb to their salary demands. At private schools, the faculty does not have recourse to tax dollars to finance anticipated gains.

Finally, in the public sector bureaucracy is robust, which makes individual bargaining a sickly creature. In the private sector, where the bureaucratic structure is generally more modest, individual bargaining is still effective and has continued to serve as a challenge to the collective mode. When private faculties do choose unionization, the dye is cast. Despite the *Yeshiva* decision, the vast majority of faculty in private colleges who were bargaining prior to that ruling continue to bargain collectively.[12] Private institutions, principally those large, secular institutions located in the east, remain unionized. While faculty at schools like Harvard, Columbia, Stanford, Chicago, and Princeton have not embraced unionism, neither have faculty in less prestigious private two-year colleges. The same assurances cannot be given for schools of greater prestige in the public sector.

Non-Academic Employees

Shared governance has never been an operative term for non-faculty personnel. Support staff employees are solicited, on occasion, for service on campus-wide committees, such as health and safety committees. They are even referred to as members of the academic community—a nomenclature whose appeal is often lost on such employees. The extent of unions in the Ivy League is representative.

At Yale University, service and maintenance workers have been certified to bargain collectively since 1942. At Harvard University, custodians, guards, and food service personnel organized as early as 1938, police in 1952, and mechanics, stockworkers, laborers, typographers, pressworkers, and bookbinders in 1967. At Dartmouth College, service workers joined a union in the early 1960's. Princeton University service and maintenance employees were certified to bargain in 1945. In 1959, the operating engineers organized. In 1960 the painters and in 1977 the library clerks joined a union. At Columbia University, maintenance and security workers organized in 1943, while clerical, dining room, food service, bartenders and hospital workers all organized in the 1960's. At the University of Pennsylvania, maintenance personnel organized in 1951, skilled trades in 1956, and nearly all other support staff workers by the early 1970's. At Cornell University, skilled crafts have been organized since 1970. Gary J. Posner, former Director of Personnel Services at Cornell University, has noted that since 1979, Cornell has been subjected to seven NLRB representation petitions, seven elections, seven unfair labor practice charges, and a twelve-day strike by the International Union of Operating Engineers. The United Auto Workers remain active in attempting to organize the 4,000 remaining support staff at the university.[13] Obviously, what is apparent, not only at prestigious universities, but also at thousands of public and private institutions throughout the east, midwest, far west, and even south, is that for nonfaculty personnel the college is simply the employer and they, the employees. This is true at large universities and at smaller colleges like Kalamazoo, Bradley, Beloit, Goucher, Tuskegee, Occidental, Claremont, and Lewis and Clark.[14]

Collective Bargaining as a Cause Celebre

The emergence of unions in academe did not receive much attention until the late 1960's. Then, the literature signaled that the rift between faculty and administrators would grow with the ultimate consequence the transformation of the groves of academe into the fields of Armageddon. That this had not occurred with support staff and their (AFL-CIO) exclusive representatives was not of any consequence. Predictions abounded regarding the demise of collegial governance systems, the learning environment, and the stature of the university in American society.

Most of the earlier predictions have not come to pass. Aaron Levenstein, Professor Emeritus at Baruch College and an astute and veteran observer of collective bargaining in higher education, recently postulated that,

> "We were told that collective bargaining would foreclose collegiality and would destroy faculty senates. . . . Not all of you will agree with my conclusion that collegiality was never much of a reality, that personnel decisions, which were supposed to be suffused with collegiality, were more often than not the product of bias, politics, and all the other factors that go into such decisions elsewhere. My own judgement . . . is that greater fairness, and hence more collegiality, now exists under a system that allows for due process through the medium of union-negotiated grievance procedures".[15]

The debate continues. At least one conclusion is inescapable: Many who were concerned with collective bargaining in higher education were worrying about the wrong things.

Limitations

No book can describe all of the formal and informal aspects of the industrial labor relations relationship. Nor can a compilation of writings, however insightful and lucid, serve as a roadmap or guarantee productive collective bargaining patterns. Dealing with unions and management requires a number of special talents. The entire process is multi-dimensional and inherently political. Individual actors can make a great difference in the outcome. The art of being effective in labor relations requires significant expertise and experience. In addition, the foundations of labor relations in higher education are constantly shifting. The recent *Yeshiva* decision, where no less an authority then the U.S. Supreme Court has declared that every faculty member is a manager, provides the best example. In this field, the difference between the savant practitioner and the experienced neophyte is that the former is most cautious of referring to anyone as an expert.

ENDNOTES

[1] The National Center for the Study of Collective Bargaining in Higher Education and the Professions (NCSCBHE/P), located at Baruch College, City University of New York (212-725-3390), has published ten bibliographies devoted solely to collective bargaining in higher education. Faculty unionization is also prevalent in Canadian, South American, and European institutions of higher education. Complete statistics on faculty unionization in American and Canadian institutions are kept by the National Center for the Study of Collective Bargaining on Higher Education and the Professions. For further reading see: Joseph W. Garbarino, *Faculty Bargaining*, (New York: McGraw-Hill Book Co., 1975); Frank R. Kemerer and J. Victor Baldridge, *Unions on Campus: A Report Prepared for the Carnegie Commission on Higher Education*, (San Francisco: Jossey-Bass Publishing Co., 1975); William H. Lieneman and Bruce Bullis *Collective Bargaining in Higher Education Systems*, (Washington, DC: American Association of State Colleges and Universities, 1980); and Joseph N. Hankin, "Planning and Organization for Collective Negotiations in Community and Junior Colleges." (Washington, DC: American Association of Community and Junior Colleges, 1977).

[2] George W. Angell and Edward P. Kelley, Jr. and Associates, *Handbook of Faculty Bargaining* (San Francisco, CA: Jossey-Bass Publishers, 1977.)

[3] Statistics on faculty unionism can be obtained from the NCSCBHE/P at Baruch College. Figures on support staff are not regularly maintained. In 1977, the CUPA Union Relations Council assessed the extent of the support staff unions in academe. Data indicated widespread penetration.

[4] E.C. Ladd and S.M. Lipset have set forth this argument in a number of publications. See *Professors, Unions and American Higher Education* (Berkeley, Ca., The Carnegie Commission on Higher Education, 1973) and *The Divided Academy*, (New York: McGraw-Hill Books Co., 1975).

[5] Under particular circumstances, the union has sometimes overwhelmed the academic senate and usurped all authority from that body. This is not always the case. There are instances where the growth and strength of senates is encouraged under collective bargaining. By and large, collective bargaining

has not brought the demise of academic senates. It is also not uncommon for the management in unionized environments to contribute to the viability of the senates. For more information see: J. Victor Baldridge, Frank R. Kemerer and Associates, *Assessing the Impact of Faculty Bargaining* (Washington, DC: American Association for Higher Education, 1981); Kenneth P. Mortimer and T.R. McConnel, *Sharing Authority Effectively* (San Francisco, CA: Jossey-Bass Publishers, 1979); and Joseph W. Garbarino, *Faculty Bargaining* (New York: McGraw-Hill Book Co., 1975).

[6] Wilfred Sheed, "What Ever Happened to the Labor Movement: A Report on the State of the Unions" *The Atlantic*, 232 (Summer 1973): 42–69.

[7] Margaret K. Chandler, Daniel J. Julius, and Thomas M. Mannix, "Is Institutional Prestige the Key Variable in Faculty Collective Bargaining?", *Special Report #31*. (Washington, DC: Academic Collective Bargaining Information Service, 1977).

[8] Thomas M. Mannix in his article in this volume discusses the University of California election. See also, Joseph W. Garbarino, "An Analysis of the Berkeley Faculty Election", *California Public Employee Relations*, 46 (1980): 22-27 and Joseph W. Garbarino, "Proposition 13 and Faculty Organizing Under Heera", *California Public Employee Relations*, 39 (1978): 23-32.

[9] Margaret K. Chandler and Daniel J. Julius. *Faculty vs. Administration: Rights Issue in Academic Collective Bargaining*, (New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1979).

[10] Beverly T. Watkins, "Two Teachers' Groups Eye AAUP Alliance: AFT Chief Sees Union Sweep on Campuses" *The Chronicle of Higher Education*, (July 13, 1981): 39. See also, *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education*, and Billie W. Kramer, "Institutional Units and Campuses with Faculty Collective Bargaining Agents", *Special Report #12*, (Washington, DC: Academic Collective Bargaining Information Service, 1980).

[11] Joel M. Douglas, with Carol Rosenberg, editors, *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education*, (New York: National Center for the Study of Collective Bargaining in Higher Education and the Profession, Baruch College, City University of New York, 1983).

[12] The *Yeshiva* decision has had an impact on organizing drives in the private sector. The NCSCBHE/P has a great deal of information on this topic.

[13] Gary J. Posner, "Unionization and Positive Employee Relations: The Cornell Experience—A Case Study" *Journal of the College and University Personnel Association*, 32(4) (1981) 6–9.

[14] A comprehensive listing of colleges and universities with unions representing support staff was compiled by the Council on Union Relations (James R. Thiry, Chair) of the College and University Personnel Association in October 1980. Information on that study can be obtained from Daniel J. Julius, Chair, Union Relations Council, College and University Personnel Association. Address correspondence to Faculty and Staff Relations, California State University, Office of the Chancellor, 400 Golden Shore, Long Beach, California 90802.

[15] Aaron Levenstein, "The National Center for the Study of Collective Bargaining in Higher Education: The First Ten Years—Part II" in Joel M. Douglas, editor, *Campus Bargaining at the Crossroads Proceedings, Tenth Annual Conference* (New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1982), p. 114.

The Authors

RICHARD E. BJORK*

Richard E. Bjork was Chancellor, Vermont State Colleges. Prior to coming to Vermont he served as President of both Stockton State College and Glassboro State College in New Jersey. He has been Vice Chancellor, Department of Higher Education, State of New Jersey; Dean of Liberal Arts, State University of New York at Plattsburgh; Dean of Students at Austin College in Texas; and Assistant Professor of Social Science, Michigan State University. He has authored a variety of articles on management and innovation in higher education. He has served as Chair of 19 evaluation teams for the Middle States and the New England Associations, as Director of the New Jersey Educational Computer Network, and as the President of the Board of Directors of Research for Better Schools, a Philadelphia based educational laboratory and research organization. He has been a featured speaker at meetings of the American Association of State Colleges and Universities, the American Council on Education, the Middle States Association, and the Association of Deans and Counselors. He received a B.A. from Yale University, a M.A. from Vanderbilt University, and Ph.D. from Michigan State University.

MARGARET K. CHANDLER

Margaret K. Chandler is Professor, Graduate School of Business, Columbia University. She has also been a Professor at the Institute of Labor and Industrial Relations, University of Illinois, and at the University of Chicago Graduate School of Business. She has twice been a Fulbright Professor, at Keio University in Tokyo, Japan, and at the Central University for Planning and Statistics, Warsaw, Poland. She received the McKinsey Award for the best book in the field of management in 1965 for *Management Rights and Union Interests* (McGraw-Hill Book Co., 1964) and again in 1972 for *Managing Large Systems* (Harper and Row, 1971). She is co-author, with Daniel J. Julius, of *Faculty vs. Administration: Rights Issues in Academic Collective Bargaining* (NCSCBHE/P, Baruch College, 1979). She serves on the Advisory Boards of the National Center for the Study of Collective Bargaining in Higher Education and the Professions, the Institute of Management and Labor Relations at Rutgers University, the New York State Governors Panel for Educational Disputes and the President's Arbitration Panel at Columbia University. She is active as an arbitrator and a mediator in New York and New Jersey and serves on the New Jersey Public Employment Relations Commission. She received a B.A., M.A., and Ph.D. from the University of Chicago.

NICHOLAS DIGIOVANNI, JR.

Nicholas DiGiovanni, Jr., is a Partner in the firm of Morgan, Brown and Joy, Boston, Massachusetts. He serves as labor relations counsel to the Vermont State Colleges, University System of New Hampshire, University of Vermont, Goddard College, and Lasell Junior College. He has also provided labor relations advice to the University of Massachusetts, Boston University, and Merrimack, New England, Franklin Pierce, and Endicott Colleges. He is a contributing author to the *Handbook of Faculty Bargaining* (Jossey-Bass, 1977) and to *The Law of Education* (Matthew Bender Publishers, 1984). He is active in the National Association of College and University Attorneys and the Massachusetts Bar Association. He received a B.A. from Providence College and a J.D. from Cornell University.

ALLAN W. DRACHMAN

Allan W. Drachman is a partner in the firm of Holland, Crowe & Drachman, Boston, Massachusetts. He has been counsel for the City of Boston and the State of Connecticut. He is presently labor counsel for the Boston Public School Committee and the State of Vermont. He is on the National Labor Panel, American Arbitration Association; Former Director, Massachusetts Municipal Personnel Association; Charter Member, National Public Employer Labor Relations Association and Co-chairman, Subcommittee on Public Sector Collective Bargaining, American Bar Association. He drafted the Vermont municipal labor law and wrote *Municipal Negotiations: From Differences to Agreement* (National League of Cities and National Association of Counties, 1970). He received a B.A. from Brandeis University and an LL.B. from Harvard Law School.

---

*Deceased July 1984.

DAVID J. FIGULI

David J. Figuli is a labor relations consultant and Assistant to the President for Legal Affairs at the University of Northern Colorado. Prior to that he served as Chief Legal Counsel for the Montana University System; Labor Relations Consultant and General Counsel to the South Dakota Board of Regents; and Legal Counsel and Director of Development for the Bethesda Foundation. He is a member of the Ohio, Nebraska, Montana, Colorado, and South Dakota bar associations. He has been a frequent seminar speaker for the American Council on Education Leadership Seminars, a consultant to the American Association of State Colleges and Universities, and a workshop lecturer for Western Association of College and University Business Officers. He received a B.A. and J.D. from Cleveland State University. During 1975, he served as editor for the *Cleveland State Law Review*.

JOAN GEETTER

Joan Geetter is the Assistant Vice President for Academic Affairs at the University of Connecticut. Prior to that she worked as Director of Woman's Studies and as a faculty member in the English Department at the University of Connecticut. She has published a variety of articles both on collective bargaining and on women managers in higher education. She served as a resource faculty member for Higher Education Resource Services sponsored by Bryn Mawr College. She is active in the College and University Personnel Association, a member of their Academic Personnel Council, and has presented workshops at regional and national CUPA meetings. She received a B.A. from Bennington College, an M.S. from the University of Pennsylvania, and a Ph.D. from the University of Connecticut.

SANDRA L. HARRISON

Sandra L. Harrison is Senior Employee Relations Representative for the Hughes Aircraft Corporation, Long Beach, California. Prior to that she served as Assistant Executive Director for Employee Relations, Board of Governors of State Colleges and Universities, Springfield, Illinois. She has also been Assistant to the Vice President at Northeastern Illinois University in Chicago. She served as the chief negotiator and supervised negotiations for 19 agreements concerning academic and non-academic employees in the Illinois State Colleges and Universities. She received a B.A. and an M.A. from Northeastern Illinois University and a J.D. from DePaul University.

RAY A. HOWE

Ray A. Howe is a Principal in the Dearborn Public School System, Dearborn, Michigan. Prior to that he worked as Deputy Superintendent, Associate Superintendent, and Director of Labor Relations for the Dearborn Public School System. He also served as Executive Dean, Dean of Academic Education, and Chairman of the Social Science Department at Henry Ford Community College, Dearborn, Michigan. He is widely published in the field of collective bargaining in higher education and has served as a consultant to numerous higher education organizations, including the American Association of Community and Junior Colleges, the American Council on Education, Education Commission of the States, and the Association of Community College Trustees. He has been a delegate for the U.S. National Commission for UNESCO; a Library Commissioner for the City of Dearborn; President, Dearborn Federation of Teachers, American Federation of Teachers, AFL-CIO; and Vice President of both the Michigan Federation of Teachers and the American Federation of Teachers, AFL-CIO. He received a B.A. from Western Michigan University, an M.A. from Harvard University, and a Ph.D. from Wayne State University.

JACK HUG

Jack Hug is Director of Plant Operation, California State University, Northridge. Prior to that he worked as the Director of Physical Plant, Agnes Scott College, Georgia; Assistant Director of Physical Plant, University of Wisconsin-Parkside; Director of Physical Plant, St. Bernard College, Alabama; and Supervisor of Engineering Services, University of Nebraska. He has served as Vice President for Educational Programs and Chairman of the Association of Physical Plant Administrators Institute. He is past chairman of the 19-campus California State University Association of Physical Plant Administrators. He is a contributing author to the *Basic Manual for Physical Plant Administrators* published by the Association for Physical Plant Administrators. He is a member of the systemwide management negotiating team for the skilled crafts unit at the California State University. He received a B.A. from St. Bernard College, Alabama and completed work on steam plant operation at the U.S. Navy Service School.

DANIEL J. JULIUS

Daniel J. Julius is Director, Employee Relations, Office of the Chancellor, California State University. Prior to that he worked as Director of Personnel Services, Office of the Chancellor, Vermont State Colleges; as a Senior Management Consultant for the firm of Boone, Young and Associates in New York City; as Research Associate and Instructor at the Graduate School of Business and Teachers College, Columbia University; and as Research Consultant for the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College. He has served on the Publications and Research Advisory Board of the *Journal of the College and University Personnel Association* and is a regular contributor to that periodical. He has been invited to present research on collective bargaining in higher education at conferences sponsored by ASHE, AERA, IRRA, MLA, WACUBO, and the NCSCBHE/P. Currently, he is serving as Chair, Union Relations Council, College and University Personnel Association. He received a B.A. from The Ohio State University and an M.A. and Ed.D. from Teachers College, Columbia University.

GREGORY L. KRAMP

Gregory L. Kramp is Labor Relations Manager, at the University of California, Los Angeles. Prior to that he worked as Senior Employee Relations Analyst for the Orange County Employees Association, a union representing 12,000 employees in southern California, and as Compensation Administrator, U.S. Financial Inc., in San Diego. He is an instructor in labor relations and collective bargaining for the UCLA Extension Program and is active in the Industrial Relations Research Association. He received a B.S. from the University of Albuquerque, a M.B.A. from the University of Oregon and a J.D. from Western State University (California).

DAVID KUECHLE

David Kuechle is Professor of Labor Relations at Harvard University Graduate School of Education and Educational Director of the Institute for Educational Management. He serves as a member of the faculty for the Executive Management Program for State and Local Government at the John F. Kennedy School of Government at Harvard University and for the Western Association of College and University Business Officers at Stanford University. Prior to coming to Harvard he worked as an Industrial Relations Supervisor for the A.O. Smith Corporation in Milwaukee, Wisconsin and as Professor and Chairman of the MBA program at the University of Western Ontario in London, Canada. An arbitrator and mediator, he has been active in the Industrial Relations Research Association, Society for Professionals in Dispute Resolution, and Wisconsin Bar Association. He received a J.D. from the University of Wisconsin and a. M.A. and Ph.D. from Harvard University.

THOMAS D. LAYZELL

Thomas D. Layzell is the Executive Director of the Board of Governors of State Colleges and Universities, Springfield, Illinois. Prior to that he worked as Deputy Executive Director for Administration and Fiscal Affairs and Treasurer for the Board of Governors; as Vice President for Administration, Governors State University, Illinois, where he also held the rank of University Professor; as Budget Associate for the Illinois Board of Higher Education, and as an attorney with the firm of Galowich and Galowich in Joliet, Illinois. He serves as a consultant on collective bargaining in higher education to colleges and universities throughout the U.S. and is active in the National Association of College and University Business Officers, the Academy of Academic Personnel Administration, and the National Public Employer Labor Relations Association. He received a B.A. from Millikan University (Illinois) and a J.D. and M.A. from the University of Illinois.

IRA B. LOBEL

Ira B. Lobel is a Commissioner, Federal Mediation and Conciliation Service, Albany, New York. He also serves as a Lecturer for the New York State School of Industrial and Labor Relations, Cornell University. Prior to being appointed a commissioner he served as a Labor Relations Specialist for the Federal Mediation and Conciliation Service and for the Division of Public Employee Labor Relations, U.S. Department of Labor. He has also worked as a Labor Economist for the Division of Research and Analysis, U.S. Department of Labor. He is an active mediator for colleges and universities in New York, Massachusetts, and Vermont. He has been consultant to the Florida Public Employee Relations Commission. He received a B.S. from Cornell University and a J.D. from the Catholic University of America.

THOMAS M. MANNIX

Thomas M. Mannix is Director of Labor Relations, University of California Systemwide Administration. Prior to coming to California he served as Chief Negotiator and Contract Administrator at Western Michigan University; Director, National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York; Staff Representative, New York State United Teachers (AFT, AFL-CIO/NEA); and Teaching Assistant, New York State School of Industrial and Labor Relations, Cornell University. He serves as a consultant on collective bargaining in higher education to colleges and universities throughout the United States. He has served on the panel of arbitrators for the Board of Governors of State Colleges and Universities in Illinois and as Chair of the Tripartite Arbitration Panel for the University of Alaska, and serves on the National Advisory Board of the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Baruch College. He received a B.S. and an M.S. from the State University of New York at Plattsburgh and New Paltz. He studied collective bargaining, organizational behavior, and educational administration at the New York State School of Industrial and Labor Relations, Cornell University.

KENNETH P. MORTIMER

Kenneth P. Mortimer is Professor and Senior Scientist, Center for the Study of Higher Education at the Pennsylvania State University. Recently he has served as Project Director. National Commission on College and University Trustee Selection, for the Association of Governing Boards. He has also worked as a Post Graduate Research Educator at the Center for Research and Development in Higher Education, University of California at Berkeley. In addition to being widely published in the field, he is a consulting editor for the *Journal of Higher Education*, a reviewer for the *AAUP Bulletin, Social Problems,* and *Review of Higher Education*. He has served on Committee T, Government of Colleges and Universities, of the American Association of University Professors; as President of the Association for the Study of Higher Education; on the NCHEMS Board of Directors, the Teachers Insurance Annuity Association Research Advisory Panel, and the National Advisory Committee, Kellogg Project on Continuing Professional Education. He has served as a consultant to colleges and universities throughout the U.S., to the Danforth, Lilly Endowment, Association of Governing Boards, Education Commission of the States, and National Institute of Education. He received a B.A. and M.B.A. from the University of Pennsylvania and a Ph.D. from the University of California at Berkeley.

CAESAR J. NAPLES

Caesar J. Naples is Vice Chancellor, Faculty and Staff Relations, Office of the Chancellor, California State University. Prior to that he worked as General Counsel and Chief Negotiator for the Board of Regents, State University System of Florida; Assistant Vice Chancellor for Employee Relations, State University of New York; Assistant Director of Employee Relations, Governor's Office of Employee Relations, State of New York; Counsel and Staff Director, Select Joint Legislative Committee on Public Employment Relations in the New York Senate; and as a labor relations attorney with the firm of Moot, Sprague, March, Landy & Fernbach in Buffalo, New York. He is widely published in the field and serves as a consultant to organizations, foundations, and institutions throughout the U.S. He is a co-founder of the Academy of Academic Personnel Administration, on the National Advisory Board of the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Baruch College, and has served as a member of various committees of the American Bar Association, American Arbitration Association, New York State Bar Association, Florida Bar, and College and University Personnel Association. He received a B.A. from Yale University and a J.D. from the State University of New York at Buffalo.

WILLIAM J. NEFF

William J. Neff is Assistant Vice Chancellor for Labor Relations at the University of California, San Francisco. Prior to that he worked as Assistant Director of Personnel and Director of Labor Relations at Michigan State University. He teaches personnel management, labor relations, and labor law at Central Michigan University, Graduate Program in the Institute for Career Development; the University of California, Berkeley, Business Programs; and at the

University of California, San Francisco School of Nursing. He is a labor relations consultant for numerous institutions of higher education. He is active in the American Bar Association, Labor Relations Law Section and in CUPA, where he serves as a Vice President for Councils and Professional Development. He is also a contributor to the *Journal of the College and University Personnel Association.* He received a B.S. from Canisius College (New York), a J.D. from the State University of New York at Buffalo, and an M.S. from Michigan State University, School of Labor and Industrial Relations.

JOHN F. O'HARA

John F. O'Hara is a Partner in the firm of Parker, Milliken, Clark & O'Hara, Los Angeles, California. He is a specialist in labor relations law. He also serves as a guest lecturer at the UCLA Institute of Industrial Relations. He has been a Trustee of the University of Santa Clara, the Hastings College of the Law, and Mary Hospital in California. He has served as Chair of the Committee of Bar Examiners of the California State Bar, National Conference of Bar Examiners, and Los Angeles County Bar Association Labor Law Committee. He is active on the American Bar Association Labor Law Committee and is a Fellow of the American Bar Foundation. He received a B.A. from the University of Santa Clara and a J.D. from Hastings College of the Law, University of California.

JACOB M. SAMIT

Jacob M. Samit is Assistant Vice Chancellor, Employee Relations, Office of the Chancellor, California State University. Prior to that he worked as Director of Labor Relations, Minnesota State College System; Director of Field Services, College and University Department, American Federation of Teachers and as a secondary school mathematics teacher in the Pinellas County Schools, St. Petersburg, Florida. He has personally negotiated or supervised negotiations for academic and nonacademic employees at Park and Cottey Colleges (Mo.), Goddard College (Vermont), Antioch School of Law (Washington, DC), Western Oregon State College, University of Oregon (Graduate Teaching Fellows), the Florida State University System, Vermont State Colleges, Board of Governors System in Illinois, and the Minnesota State University System. He has served as a resource faculty member for the American Council on Education, National Public Employers Labor Relations Association and the National Center for the Study of Collective Bargaining in Higher Education and the Professions. He received a B.S. from Glassboro State College (New Jersey) and an M.A. from the University of South Florida. He has also studied collective bargaining, personnel administration and labor law at the George Meaney Center in Washington, D.C., and the Adjutant General's School, U.S. Army.

NAOMI R. STONBERG

Naomi R. Stonberg is a Partner in the firm of Holland, Crowe & Drachman, Boston, Massachusetts. She has been counsel to numerous municipalities, public school committees and housing authorities in the New England region. She serves as labor relations counsel to the Board of Trustees of the Connecticut State Universities. She is a member of the Subcommittee in Public Sector Collective Bargaining, American Bar Association, Academy for Academic Personnel Administration, Woman's Bar Association, Counsel of School Attorneys, and the Boston Bar Association. She received a B.A. from Simmons College, an M.S.W. from Catholic University, and a J.D. from New York University.

GARY W. WULF

Gary W. Wulf is Vice Chancellor for Resource Administration, University System of New Hampshire. Before being promoted to Vice Chancellor he served as Director of System Personnel Services for the New Hampshire System. Prior to coming to New Hampshire he worked as Director of Personnel at Northern Illinois University and as Personnel Manager, Continental Telephone Corporation in Illinois. He has served as an arbitrator and labor relations consultant to colleges and universities in New England and the Midwest. He has been active in the College and University Personnel Association and is a past Chair of the Eastern Region. Presently he serves on the Academic Personnel Council and is a regular contributor to the *Journal of the College and University Personnel Association.* He had also served as Chair, Personnel Directors Advisory Committee of Illionis Universities and President of the Dekalb County Personnel Association. He received a B.A. from Cornell College (Iowa) and an M.S. from Northern Illinois University.

PART ONE:

Collective Bargaining and University Administration

Assessing the full impact of collective bargaining on institutions of higher education requires an understanding of four fundamental caveats. First, it is terribly difficult to isolate the effects of employee unionism from the consequences of other political, economic, and social phenomena that have transformed the academy. For example, institutional transition, falling enrollments, a decline of federal and state funding, increased government regulation, the loss of public confidence in the value of a college degree, and the continuing influence of state governments and coordinating boards, like collective bargaining, all have changed the collegiate environment.

Second, it is a complex task to discern what management strategies and behavior are most appropriate in unionized institutions. We do know that decision-makers, from both union and management, have been innovative in their abilities and desires to adopt collective bargaining to existing institutional structures and processes. Unionization serves as a catalyst for continued organizational change. These changes, in turn, demand that new management strategies be adopted.

Third, the course of collective bargaining is a function of conditions before bargaining. Highly adversarial relationships predate the vote for collective bargaining. Yet once negotiations commence, faculty and staff unions endeavor to incorporate existing policies and procedures into collective bargaining agreements.

Fourth, the individuals responsible for managing the collective bargaining process will shape, to a large degree, the attitudes of others toward unionization.

This section begins with a chapter by Dr. Kenneth P. Mortimer. He identifies institutional and demographic forces that affect collective bargaining processes and outcomes. His basic assumption is that economic and political factors substantially influence the legal framework, the tenor of negotiations settlements reached, and contract administration.

The next chapter, authored by Dr. Richard E. Bjork, explores the basic issues that higher education managers must confront when operating in a unionized environment. Bjork presents a framework for effective action and examines collective bargaining as a tool for managing personnel and distributing resources in the university. The chapter concludes with a description of the evolutionary character of collective bargaining at the Vermont State Colleges between 1973 and 1983.

Mr. David J. Figuli, Esq. discusses the role and function of the trustees and president as they approach collective bargaining. Mr. Figuli concludes that when approached with understanding and commitment, collective bargaining can become an effective tool for increasing communication and goodwill between the higher education employer and its employees.

Mr. Jack Hug writes on the far-reaching effects of collective bargaining on managers in the physical plant. The chapter also discusses the task of integrating good employee relations into the daily work of the physical plant director.

In contrast to the microscopic inspection received by the college teacher in his or her new role as union member, writes Dr. Joan Geetter, "...relatively little attention has been paid to the faculty person as manager." The problems thrust upon the faculty manager, as well as good practical advice for managers learning to live with a new identity, is the subject of this chapter.

This section concludes with a chapter by Mr. William Neff. He highlights the differences between the collective bargaining environment found on a university campus and that found in a university teaching hospital.

The Context of Collective Bargaining in American Colleges and Universities

By Kenneth P. Mortimer

College and universities are experiencing unprecedented pressure to accomplish more with fewer human resources. In the early 1970's, American postsecondary education began its first sustained experience with deceleration of growth. The Carnegie Council on Policy Studies observes that "It may not be exactly un-American for an institution in the United States not to be intent on growth, but it certainly has been uncharacteristic."[1]

The predominant theme of the 1950's and 1960's was quantitative growth - that is, the development of new programs and the physical expansion of old ones. The emerging theme of the 1980's and 1990's must be qualitative growth - how to improve institutional performance with fewer human resources. This management of qualitative growth will permit a reordering of priorities and provide an opportunity for colleges to concentrate on human growth and educational enrichment. It is clear that effective human resource management is a key ingredient in the achievement of qualitative growth.

This chapter sets forth the context of collective bargaining in colleges and universities for the coming decade. The basic assumption is that the context of societal, economic and political factors have a substantial influence on the legal framework, the bargaining process itself, the settlements reached, and contract administration. The chapter is meant to be of use to those concerned with all aspects of human resource management in higher education.[2]

The chapter has three major sections. The first discusses the prevaling national demographic societal factors affecting college and university enrollments, staffing profiles and the income-expenditure gap. The second section provides an overview of state government-institutional relations within which contracts are negotiated and administered. The third portion of the chapter concentrates on institutional contexts. Colleges and universities are complex, nonprofit organizations with ambiguous goals and professional control structures. The individual institution's context may be characterized by the need to reallocate, reduce, or retrench human resources.

A concluding section argues for a wholistic and strategic view of human resource management. This comprehensive view should be characterized by a developmental perspective, a flexible approach to human resource management and a thorough knowledge of your own institution.

ENROLLMENTS AND DEMOGRAPHICS

There are at least three major elements in the national discussion about enrollment projections for the 1980's and '90's: the shrinking size of the traditional college-age population, the rate of participation in college by high school graduates, as opposed to more mature adults, and changes in patterns of student preferences towards career-oriented programs. A confounding factor is the immense variability in each of these elements by region of the country and in the separate states.

ENROLLMENT PROJECTIONS

The number of 18-year olds almost doubled during the 30-year period from 1950 to 1980.[3] The decade of the 1960's saw a 45 percent increase in 18-year olds. Using 1979 as the base year, there will be sharp drops in the number of 18-year olds as follows:

Year		Drop
1986	-	18%
1988	-	13%
1991	-	26%
1995	-	22%

It is expected that these figures will begin to climb again in the late 1990's, but it does appear post-secondary education is in for a difficult 10 to 15 years.

Factors other than the number of 18 year-olds affect enrollment levels, however. The principal factor can be discussed under the general category of college participation rates, for example, the societal, economic, and personal forces that encourage or discourage college attendance.[4] These forces include a higher proportion of adults who attend college, the retention rate of those students who begin college, the job prospects of those in professionally-oriented programs, greater foreign student enrollments, and greater high school graduation rates.

As institutions consider these demographic and enrollment factors they have to disaggregate national statistics into regional, state, and even local configurations. For example, projections of high school graduates that take into account differences in birth rates by state, as well as migration patterns among states, indicate that declines in the northeast and northcentral regions will be on the order of 40 percent and 32 percent respectively.[5] The states of New York, Massachusetts, Connecticut, Rhode Island, and Delaware are projected to have declines of more than 40 percent. Those with a projected declined of 34 to 40 percent include Pennsylvania, New Jersey, Maryland, Michigan, Illinois, Minnesota, Ohio, Wisconsin, and Iowa.

The problem for an institution operating in the context of one of these states becomes even more complex. For example, the results of the 1981 National Enrollment Survey "suggest that many college presidents seem to have a 'last survivor' mentality about enrollment problems. They apparently believe that their institutions will be immune to the troubles caused by the demographic trends of the 1980's."[6]

It is politically difficult for an institution to plan to reduce size. The forces both within and outside the institution resist plans that cut personnel or other resources. While it is preferable to plan for reductions rather than simply to react, personnel administrators who find their institutions unreceptive to such plans should concentrate their efforts on the creation and maintenance of flexibility of human resources.

NATIONAL FACULTY PROFILE

The search for flexibility in human resource management includes both faculty and staff, but the following section discusses only faculty. Staff profiles will be more contingent on local conditions and more institution-specific, but no less important.

A look at the demographic data on the changing composition of the professoriate leads to four basic observations:

- net additions in the professions have dropped to about zero.
- faculty are getting older.
- tenure ratios in four-year colleges and universities are approaching 70 percent.
- institutions are making greater use of part-time faculty.

Labor Market

According to the Carnegie Council on Policy Studies in Higher Education, "The labor market for faculty members has virtually collapsed in all but a few still active fields. At the peak of its activity, additions to the professoriate were being made at the rate of 20,000 and more per year. The current level of net additions is about zero and will remain at that level or below it for much of the rest of this century."[7] These figures are of little help to institutions trying to deal with the wild swings in the current academic labor market between the demand for professors of english and computer science for example. There is little if any job market for the former and a sellers' market for the latter.

Age

The stagnation in the academic market is compounded by the fact that it follows an era of unprecedented growth in the market. Again quoting the Carnegie Council, "The result is that there is a bulge of faculty members in the age range from 33 to 47 years and a decided deficiency in the 55 years and older bracket."[8] As this group moves through the system, the average age of faculty will gradually rise. As will be discussed later, an older faculty cohort is usually a more costly one.

Tenure

There has been a 28 percent increase in the proportion of faculty with tenure, from 50 percent in 1969 to 64 percent in 1978.[9] Minter and Bowen report that in 1981-82, 55 percent of the faculty in private institutions and 67 percent of those in public institutions were tenured.[10] The Carnegie Council projects tenure ratios in four-year institutions will rise to about 77 percent by 1986 and decline gradually to 67 percent by the year 2000.[11]

There are at least three important consequences of these combined facts of a stable academic labor market, the graying of the faculty, and an increasingly tenured professoriate. There will be a dearth of openings for young scholars particularly in the humanities and social sciences; colleges and universities will face difficulty in adjusting their course offerings to respond to the changing demands of students for different majors; and it is almost inevitable that an aging, senior faculty will be more costly. In response to the need for program flexibility and rising cost ratios, many institutions have increased their use of part-time faculty.

Part-Timers

According to Leslie and his colleagues, "It is important to recognize the clear trend, among the nation's enrollment-driven colleges, to use of increasing numbers of part-timers. The available data point to persistently higher use over the next half-decade. Community colleges already employ half or more of their faculty or part-timers. The other sectors, which are neither research-oriented nor among the high-prestige colleges and universities, seem likely to increase their reliance on part-timers very substantially.... By 1984, as many as 40 percent of all faculty may be part-timers, a substantial increase from the one-third currently so employed."[12]

Each institution must make serious efforts to assess its own staffing situation in the light of these national trends. An institutional faculty profile must include an analysis of the changing academic labor market, the age and tenure distribution of the faculty, and the role it wishes to assign to part-time faculty.

THE INCOME-EXPENDITURE GAP

Institutional expenditures have been rising at a faster rate than revenues in recent years.[13] At the Pennsylvania State University, inflation rose 92 percent from 1972 to 1981, but the State appropriation only rose 60 percent.

The costs of programs mandated by the federal and state governments threaten to alter basic institutional cost structures substantially. Mortimer and Tierney estimate that one large public institution can anticipate a 50 percent ($150 million) rise in its social security contribution for faculty alone over the four-year period 1977-78 to 1980-81 and a 150 percent increase by 1988-80.[14]

The problems associated with the revenue expenditure gap are confounded by the special practices of academic institutions. These are well summarized in a series of "Bowen's Laws":[15]

- The dominant goals of institutions are educational excellence, prestige, and influence.
- In quest of these goals, there is no limit to the amount of money an institution could spend.
- Each institution raises all the money it can.
- Each institution spends all it raises.
- The cumulative effect of these laws is toward ever increasing expenditures.

Rising expenditures are such a compeling force in institutional finances that it is difficult to overstate. In one institution that went on a 5-year decremental budgeting process, expenditures for academic affairs rose from $113 million in 1977-78 to $153 million in 1981-82. Most of this increase was due to the rising cost of personnel in terms both of salaries and of fringe benefits.

STATE GOVERNMENT INSTITUTIONAL RELATIONS

The legal structures for collective bargaining are provided by federal law for independent colleges and by state and local statutes for public institutions. Some institutions have contracts that rest on board-employee agreements that collective bargaining is an appropriate mechanism to express employee concerns. Assessing the content of the relevant state bargaining statutes is an important part of any institutional approach to negotiation.

It is apparent from the 1983 sessions of state legislatures that bargaining legislation is receiving renewed attention in some states. The 1983 legislatures in Ohio, Illinois, and Washington passed bargaining legislation, although the governor vetoed it in Washington. Wisconsin continues to be very close to passing enabling legislation.

In the context of public institution elections, negotiations and administration of a contract are influenced by legislation. The politics of the state and the nature of relations between the legislative and executive branches of state government are equally important contextual factors.

EXECUTIVE-LEGISLATIVE POLITICS

The timing and nature of financial settlements must be based on legislative and gubernatorial willingness to fund them. This may seem like an innocent enough statement, but it has often confused bargaining in such states as Montana and Pennsylvania.

In 1976 the University System in Montana negotiated a series of agreements with classified unions and submitted the salary settlements as part of the governor's budget to the legislature. Since there is no statutory requirement for legislative approval of these agreements, the salary settlements contained a clause that the wage levels were contingent upon adequate funding by the legislature.[16] In fact, the legislature did not adequately fund the settlements and, further, expressed sharp criticism over the "irresponsible" settlement in the university system. According to Veazie,

> Some legislators resented being put on the spot for denying these increases... the university system renegotiated and lowered earlier settlements, many of which had even been ratified by the employees. This was a bitter and disillusioning experience for the unions and, as a result, there were no meaningful prebudget negotiations during the succeeding budget cycles. Instead, "prebudget negotiations" have consisted of legislative lobbying efforts by unions as well as management.[17]

Lack of executive and legislative communication and congruence in financial statements with public employee unions has been even more bizarre in Pennsylvania. While the full details of that case are reported elsewhere, one fundamental point is relevant here.[18] Throughout the early 1970's, the executive branch of state government, in this case the Secretary of Education's office, regularly negotiated agreements with the faculty union, which the legislature only partially funded. One state official indicated, for example, "that the additional funds appropriated to compensate for faculty salary increases covered only 65 percent of the cost of these increases."[19]

In essence, the Pennsylvania situation was the result of a combination of factors including a governor favorably disposed towards public employee unions, a powerful faculty union with direct access to the governor, and a relatively unsophisticated attitude towards collective bargaining by one major executive agency, the State Department of Education. Whatever the cause, the impact has been to put successive cost squeezes on the 14 institutions in the Pennsylvania State College and University system. One hopes the newly formed State System of Higher Education, which has the same 14 campuses but is now separated from the State Department of Education, will avoid this pitfall.

In New York State the establishment of the Office of Employee Relations and its control over personnel costs constituted a new dimension of university-state government relationships.[20] The Carnegie Council on Policy Studies criticized the New York experience as one that "...directly and unacceptably invites, or at least permits, intervention by political authority into issues of institutional management and academic affairs."[21]

The Carnegie Council prefers the Michigan model where the president and the board of trustees "are responsible for presenting, defending, lobbying for, and ultimately living with appropriations made available by the legislature and the governor...."[22]

UNION INFLUENCE

Managers also have to be aware of the growing power and influence of public employee unions. Unions with state-wide and national affiliations have proven, and likely will continue to prove, that they have substantial political clout. The most pertinent examples include by-passing established administrative channels to gain their own objectives through direct pressures on state executives and legislators.

There is no question that the Professional Staff Congress's direct access to the City University of New York's Board of Higher Education was and is a significant factor in the bargaining process in New York City. During research project interviews in Massachusetts during the mid-1970's, both administrators and employees agreed that affiliates of the American Federation of Teachers and National Teachers Association had better access to state government and better information sources than did management.

From his analysis of state-institutional relations under bargaining in New Jersey, Begin concludes "a relatively weak bargaining law, coupled with a conservative management approach may lead to greater political involvement since the union perceives end runs may be more effective, and economic decisions are always likely to involve political forces."[23]

STATE GOVERNING AND COORDINATING BOARDS

The structure of higher education policy-making at the state level is complex and involves interactions between the executive and legislative branches of state government. While a specific issue may depend on whether the governor or an important legislator takes an interest in higher education, there are some persistent patterns of higher education-state relations.

State-Level Structures

Folger reports that the biggest changes in state organization have been the increasing scope and recognition of state postsecondary agencies as important regulatory and policy recommending groups.[24] The importance of formal and technical procedures for planning and policymaking is increasing, particularly in the area of budget development.

Millard points out that all states except Wyoming have some form of statewide postsecondary or higher education governing, coordinating, or planning board.[25] Twenty-one states have consolidated governing boards that are legally responsible for the management and operation of all institutions under their control. The powers of the remaining coordinating boards vary substantially. In 19 states, the coordinating agency has regulatory functions in specific areas such as budget review or program approval. Seven other states have coordinating agencies that are advisory only. Delaware has no coordinating body *per se.*[26]

INSTITUTIONAL CONTEXT

Both the national and state governments provide a complex set of environmental factors in which collective bargaining occurs. This assessment would not be complete without some discussion about colleges and universities as organizations and their contextual needs to reallocate, reduce, or retrench human resources.

WHAT KIND OF AN ORGANIZATION IS A COLLEGE OR UNIVERSITY?

Effective human resource management in an academic setting requires an understanding of the special nature of colleges and universities as organizations. An academic institution is a complex, non-profit organization with ambiguous goals and a high degree of professional autonomy.

Complexity

"Universities are among the most complex of all institutions, exceeded in complexity only by governments and military establishment. Business and industries may be larger but they are seldom as complex."[27] Universities are teaching, research, and service institutions. They form a system in which thousands of people of relatively autonomous or independent status are employed. They house and feed thousands of students daily, administer to their health needs, and satisfy their recreational needs. They conduct sports activities that are mass entertainment. They purchase almost all consummable items that one can name, from scientific apparatus of every type, to thousands of drugs for a School of Pharmacy and computers of the most sophisticated design. They maintain a police force. They park thousands of cars daily. They manage and control funds that are in the tens and hundreds of millions of dollars.

Colleges and universities employ a work force of the most intelligent, most talented, and best educated people in society. These people, the faculties of the nation's colleges and universities, enjoy freedom known to few others in our society; i.e., they are autonomous professionals. The U.S. Supreme Court has recognized that faculty claim and receive considerable participation in the governance and management of "mature" colleges and universities. Few other organizations have such a complex management system in which the workers have a high degree of self-governance and policy control.

Finally, colleges and universities operate in the public interest in a special way. They provide the nation's talented human resources, they are a chief knowledge producer, and they are one of but a few institutions that serve as the nation's conscience and the nation's critic. In these terms, colleges and universities are accountable in ways that are faced by only a few other institutions with similar roles.

Non-Profit Status

The fact that colleges and universities are non-profit organizations calls into question whether, for example, efficiency is a relevant criteria in judging their effectiveness. According to Howard Bowen, a former university president,

> In profit-making organizations operating in a competitive market, strong incentives would prevail for inefficient organizations to improve. Return on the investment and even survival would depend on it. But given the not-for-profit atmosphere and the highly differentiated products of higher education, incentives for efficiency are weak and the result is the wide variance in efficiency that is readily observed.[28]

The lack of internal consensus about the relative priority to be given efficiency, as opposed to effectiveness, is a crucial factor in performance appraisal.

Ambiguous Goals and Professional Autonomy

The goals of a college or university or its subunits are not only ambiguous, they often are in conflict. One major result is ambiguity about the relative importance of teaching and research in faculty performance. While the difficulty in evaluating teaching and service activities is well known, the real conflict comes when an institution fails to reward effective performance in these areas in favor of rewards for those actively engaged in research. In the absence of such priorities, the assessment process loses legitimacy and becomes suspect.

The existence of a high degree of professional autonomy in a college and university is important in several respects. The heart of a college or university is the faculty and they operate as teachers or researchers through departments schools or colleges, not as a bureaucratic structure in normally defined terms. Hierarchical structures are minimal, individuals have autonomy; the authority for many decisions made by faculties as individuals in groups may be, in practice, a final authority; supervision of these professionals is minimal or nominal and participation in authority structures is fluid.

In addition, the elements of professionalism are not unifying but are fragmenting in their effects. Legitimacy is granted to experts who are not centralized but rather are dispersed throughout the institution in as many as 100 to 150 different departments and/or disciplines. Typical faculty members experience considerable conflict in their loyalty to the institution and to the profession-discipline. This fragmented loyalty is a particularly acute institutional problem for those faculty members in areas such as computer science, business administration, and engineering, where colleges and universities have to compete with profit-making organizations.

The effects of professionalism are not limited to faculty members. Middle-level managers are turning to professional associations in an effort to enhance their status and to develop standards of professional performance. These managers have all the symbols of emerging professionalism, including more active professional associations, demands for greater job security, and the development of statements of professional responsibilities.

The special nature of colleges and universities as organizations makes it crucial that systems of human resource management be adapted to the complex, non-profit, goal-ambiguous, professionally autonomous nature of an institution of higher learning.

Each institution must have an accurate assessment of its condition relative to personnel resources for the next few years. For heuristic purposes we identify three probable institutional needs determined by institutional context: the need to reallocate resources, people, and programs in response to changing student demands; the need to reduce institutional size and/or personnel over a reasonable period of time; and the need to retrench or lay off personnel in the short run. In practice, of course, a single-institution may find itself in all three of these conditions simultaneously.

Reallocation

Perhaps the most complex ingredient in an institutional personnel profile is trying to develop responses to shifts in student demand. The magnitude of these shifts can be illustrated from Carnegie Council Data.[29] From 1969 to 1976 undergraduate major enrollments in the professions rose by 53 percent (from 38 percent to 58 percent) whereas enrollment in humanities majors dropped 44 percent (from 9 percent to 5 percent) and in the social sciences by 33 percent (from 18 percent to 12 percent). When the number of faculty teaching in majors is considered, however, one finds an increase of only 16 percent in the professions and a decline of only 5 percent in the humanities, whereas there has been no change in the percentage of faculty teaching in the social sciences.

One could conclude from these data that higher education institutions have not been successful in reallocating faculty resources into the major fields where enrollment shifts are occurring. Not all enrollments occur in major fields, however, and the humanities and social sciences are important complementary ingredients in many undergratuate professional degree programs. But the apparent imbalances in faculty resources should not be dismissed by blind support for the liberal or general education of candidates for professional degrees. The political conflict between liberal arts and professional areas is well illustrated by the following quote about the University of Colorado at Boulder.

> In 1967 to 1977, student credit hours in business doubled, while business faculty increased by less than 10 percent. If the institution had been growing overall, the strain would not have been as severe, but with enrollment capped, reallocation of FTEs from arts and science to business proved well near impossible. One consequence was that the college of business had to impose severe restrictions on its enrollment in order to maintain its accreditation...the college had to refuse admission to some 2,000 qualified applicants for the fall of 1979. SCH/FTE faculty production in the college of business is about 50 percent higher than that of arts and science and among the highest of comparable colleges of business.
>
> In spite of these facts, when it was proposed by the administration that no cuts be made in the college of business faculty, the powerful lobbying block of arts and sciences insisted that the cuts be made proportionately among all colleges regardless of faculty loads.[30]

This incident is not isolated. The business school faculty at Temple University filed a grievance under their union contract asserting that their teaching loads were heavier on the average than those in liberal arts and that this was unfair and unreasonable. In another major public university, student credit hours per faculty member in the school of business is the highest in the university (817) and is more than twice as high as two other professional schools (365 and 370). In one liberal arts college each business faculty member produced an average of 740 credit hours whereas the liberal arts faculty averaged 470 each.

The lessons for personal administrators confronted with such wide swings in normal workload and/or productivity data are complex. The special cultures of individual disciplines traditionally have supported wide swings in "normal" academic practice. "Everyone knows" that music and nursing programs are expensive and that law and business programs tend to operate as "cash cows" for the rest of the institution. It is in such instances as these that the complexity of academic organizations is most apparent.

Reduction in Size

Some institutions will find it necessary to reduce personnel in the coming years. For example, an analysis of Montana State University's potential show

> ...that MSU will, over the next ten years, face reductions in the size of the faculty greater than the number of openings created by retirement. Because the national job market may also be very bleak, it was further assumed that faculty members will attempt to remain in their present jobs for as long as possible. The extreme version of this assumption, that no resignations will be submitted except for retirement, projects a very

> bleak picture in which perhaps an average of twelve faculty members per year will have to be involuntarily terminated. Further, if tenure is granted to 90 percent of those currently "on track," the entire faculty could conceivably be tenured.[31]

Johnstone reports that the staffing ratio at Montana State University had gone from 14:1 in 1960 to 19:1 in 1979 and implies that it has reached its limit.[32] Minter and Bowen's national surveys report only a slight change in the ratio of faculty members to students, full-time equivalents were about 1 to 14.7 in 1969-1970 and 1 to 14.1 in 1979-1980.[33] We found numerous cases where student-faculty ratios became the focus of fiscal control also. Hruby suggests in his monograph on Aquinas College that this was part of that colleges's struggle for financial stability.[34]

There are only three basic ways to increase the student-faculty ratio: either increase the number of students and hold the number of faculty constant, reduce the number of faculty and hold the number of students constant or develop some combination of the two. These various combinations have distinctly different income and expenditure enrollments, many institutions will find it necessary to reduce faculty just to maintain established student-faculty ratio policies. Another response is retrenchment.

Retrenchment

There is some confusion about the term retrenchment. As used here, it means the dismissal or lay-off of staff, tenured faculty, or faculty in mid-contract.

Three basic questions dominate the national discussion:

1. Under what conditions should (or could) personnel be dismissed or laid off?
2. What procedures are necessary and/or desirable in retrenchment?
3. What criteria should be used?

The argument over retrenchment conditions tends to revolve around what constitutes bona fide financial emergency and program discontinuance, since virtually all parties agree that faculty may be terminated for cause or medical reasons. The American Association of University Professors advocates a definition of financial exigency that involves a threat to institutional survival, whereas others would adopt a less stringent definition.[35]

Discussions with chief academic officers and the recent literature lead one to the conclusion that financial emergency is a more useful term than exigency. Emergency conveys the relative lack of time to deal with the rapidly changing circumstances involved with revenue short-falls while an exigent situation may refer to general conditions of decline.

The emergency condition of revenue short-falls is becoming increasingly common in American higher education. Mingle reports that,

> Three times in the past 10 years, economic downturns have been severe enough to cause abrupt mid-year curtailments of spending plans in some states, as tax collections dropped with the declining economy. The first substantial cutbacks affecting education occurred in the 1974-75 recession, the second in 1979-80, and states face similar circumstances in 1982.[36] (Ten Southern states have been affected in the last two years.)

The problem in the private sector is how to deal with general decline. The most common cases are when "paid accepts" fall drastically in one year. One chief academic officer lamented in the summer of 1982 that fall enrollment (paid accepts) was going to be 50 students less than planned. A $250,000 shortfall in a small college budget will require some drastic adjustments during the year.

Bowen and Glenny have made eight recommendations on the steps institutions can use during such emergency conditions. Briefly, institutions have to consider the advantages of selective as opposed to across-the-board reductions, the limits on flexibility represented by fixed costs, the appropriate student and faculty consultative mechanisms, the rules and regulations that limit fiscal flexibility and the procedures for faculty layoff and/or reallocation.[37] Other guidelines to be followed in times of retrenchment can be found in Fortunato and Waddell.[38]

Establishing retrenchment criteria requires that an institution determine the relative priority in places on different institutional areas. The institution has to define:

1. the unit of retrenchment (that is, program, department, division, or institution);
2. the categories of personnel (faculty, administrators, or others);
3. the locus of tenure (that is, department, college, or campus);
4. affirmative action goals; and
5. the order of layoff.

A WHOLISTIC AND STRATEGIC VIEW

ELEMENTS OF PERSONNEL STRATEGY

The essence of an effective academic strategy is a realistic assessment of environmental forces and their probable impact on a specific institution.[39] The remainder of this paper summarizes five major points in developing the personnel component of an effective institutional strategy.

Know Your Institution

No one is in a better position to assess the impact environmental factors are likely to have on the institution than a human resource manager with detailed knowledge of the institution. This knowledge will be developed through access to information about human resources and a data base that encourages analytic thinking. Certainly the knowledge of local and institutional employment conditions and special ways of getting things done is an essential ingredient in effecting a realistic strategic posture.

A Wholistic and Strategic View

Human resource managers are in a unique position to convince the top leadership (trustees, presidents, vice presidents, and deans) that personnel policies are relevant to all classes of employees, faculty and staff alike, and, further, that personnel costs and strategies are an important ingredient in a total institutional approach to dealing with the contextual forces outlined in this chapter.

Specifically, human resource managers should take the lead in demonstrating the much discussed links between people, programs, and budgets. No institutional strategy can be effective without a careful consideration of all of these basic elements.

A Developmental Perspective

In a complex, non-profit, goal-ambigious, professionally-oriented organization that is labor-intensive, people are the most precious asset. In times of rapid growth, personnel resources were recruited. In times of stable or declining resources, an aging work force and systems of job security, personnel have to be recruited but they also have to be nurtured and developed. Programs of development are an increasingly important responsibility of human resource management.

Plan for Flexibility

The trends detailed in this article force human resource managers to assess their institution's condition. Since any such assessments have to be responsive to unpredictable changes or turbulent environment, the more prudent administrators seek more flexibility in human resources. In faculty profiles such flexibility can be encouraged through developmental programs that seek to encourage cross-over teaching and the employment of faculty with secondary teaching areas. Some institutions have found nontenure track appointments to be an effective alternative that also promotes flexibility.

The pressure of collective bargaining may make it difficult to concentrate on such strategic considerations as those discussed above. The integration of bargaining into a comprehensive personnel structure, and eventually into the institution's strategy for dealing with environmental turbulence, is a crucial ingredient in institutional vitality. It is worth the effort!

ENDNOTES

1. Carnegie Council on Policy Studies in Higher Education. *Three Thousand Futures: The Next Twenty Years* (San Francisco, Ca.: Jossey-Bass, 1980), p. 133.
2. The basic organizational framework is taken from; Mortimer, K.P. and McConnell, T.R., *Sharing Authority Effectively* (San Francisco, Ca.: Jossey-Bass Publishers, 1978).
3. Breneman, D.W. "The Coming Enrollment Crisis", *Change Magazine*, 1983, 14-19.
4. Carnegie Council, *loc. cit.*, p. 36.
5. Brenenman, *loc. cit.*, p. 15.

6. Baldridge, J.V., Kemerer, F.R. and Green, K.C. *The Enrollment Crisis.* AAHE/ERIC Higher Education Research Report No. 3. (Washington, D.C.: American Association for Higher Education), p. 16.

7. Carnegie Council, *loc. cit.*, p. 80.

8. *Ibid.*, p. 305.

9. *Ibid.*, p. 315.

10. Minter, J.W. and Bowen, H.R. "Colleges' Achievements in Recent Years Came Out of the Hides of Professors," *Chronicle of Higher Education*, May 19, 1982, pp. 7-8.

11. Carnegie Council, *loc. cit.*, p. 315.

12. Leslie, D.W. and others. *Part-time Faculty in American Higher Education* (New York: Praeger Publishers, 1982), p. 34.

13. Mortimer, K.P. and Tierney, M.L. *The Three "R's" of the Eighties: Reduction, Reallocation and Retrenchment.* (Washington, D.C.: American Association for Higher Education, 1979), *pp. 5-23.*

14. For a comprehensive treatment of the *net* cost of social security increases on independent colleges and universities, see, Minter, W.J. and Fadil, V. "The Projected Impact of the New Social Security Taxes upon Employer Contributions at Independent Colleges and Universities - 1979 to 1982" (Washington, D.C.: National Association of Independent Colleges and Universities, 1978) ED 149 704.

15. Bowen, Howard R. *The Costs of Higher Education* (San Francisco, Ca.: Jossey-Bass, 1980), pp. 19-20.

16. Veazie, S.A. "University Collective Bargaining: The Experience of the Montana University System" *Journal of College and University Law*, (1982-83 (1): 51-67), pp. 63-64.

17. *Ibid.*, p. 64.

18. Mortimer, K.P. and Johnson, M.D. *Faculty Bargaining and the Politics of Retrenchment in the Pennsylvania State Colleges.* (University Park, Penn. Center for the Study of Higher Education, The Pennsylvania State University, 1977), p. 45.

19. *Ibid.*, p. 45.

20. Duryea, E.D. and Fisk, R.S. *Collective Bargaining, The State University and The State Government In New York* (Buffalo, N.Y.: The Department of Higher Education Faculty of Educational Studies, The State University of New York at Buffalo, December 1975), p. 25.

21. Carnegie Council on Policy Studies in Higher Education. *Faculty Bargaining in Public Higher Education* (San Francisco, Ca.: Jossey-Bass, 1977), p. 17.

22. *Ibid.*, p. 18.

23. Begin, J.P. "State-Institutional Relations Under Collective Bargaining in New Jersey" in K.P. Mortimer (Ed.), *Faculty Bargaining, State Government and Campus Autonomy* (Denver, Colorado: Education Commission of the States, Report No. 87, 1976), pp. 30-31.

24. Folger, J.K. "Implications of State Government Changes" in P. Jedamus, M. Peterson and Associates (Eds.), *Improving the Academic Management.* (San Francisco, Ca.: Jossey-Bass, 1980), p. 50.

25. Millard, R.M. "Power of Statewide Agencies" *Ibid.*, p. 67.

26. Carnegie Foundation for the Advancement of Teaching. *The Control of the Campus* (Princeton, N.J.: Princeton University Press, 1982), p. 38.

27. Anderson, G.L. *The Evaluation of Academic Administrators: Principals, Processes and Outcome.* (University Park, Penn.: Center for the Study of Higher Education, The Pennsylvania State University, 1975), p. 24.

28. Bowen, *loc. cit.*, pp. 231-232.

29. Stadtman, V.A. *Academic Adaptations: Higher Education Prepares for the 1980's and 1990's* (San Francisco, Ca.: Jossey-Bass, 1980), pp. 26, 59.

30. P. Jedamus, Peterson, M., and Associates, *loc. cit.*, p. 43.

31. Otzenberger, S.J. and Kaelke, M.E. "The MSU Scenario: A Basis for Discussion" *The Journal of the College and University Personnel Association* (31:1-6, 1980), p. 5.

32. Johnstone, W.A. "Faculty Retrenchment in the 1980's: A Question of How Many? and How Managed?" *The Journal of the College and University Personnel Association* (31:1, 1980), p. 24.

33. Minter, J.W. and Bowen, H.R. "Despite Economic Ills, Colleges Weathered the 70's with Larger Enrollments and Stronger Programs" *Chronicle of Higher Education*, May 12, 1982, p. 5-7.

34. Hruby, N.J. *A Survival Kit for Invisible Colleges: What To Do Until Federal Aid Arrives* (Washington, D.C.: Management Division, Academy for Educational Development, 1973), pp. 16-17.

35. Gray, J.A. "Legal Restraints on Faculty Cutbacks" In James Mingle and Associates (Eds.), *Challenges of Retrenchment Strategies for Consolidating Programs, Cutting Costs, and Reallocating Resources* (San Francisco, Ca.: Jossey-Bass, 1981)

36. *Ibid.*, p. 1.

37. Bowen, F.M., and Glenny, L.A. *State Budgeting for Higher Education: State Fiscal Stringency and Public Education* (Berkeley, Ca.: Center for Research and Development in Higher Education, University of California, 1976), pp. 76-77.

38. Fortunato, R.T. and Waddell, D.G. *Personnel Administration in Higher Education.* San Francisco, Ca.: Jossey-Bass Publishers, 1981.

39. Keller, G. *Academic Strategy.* Baltimore, Md.: The Johns Hopkins University Press, 1983.

Collective Bargaining in the Multi-Campus System

By Richard E. Bjork

REDISTRIBUTION OF RESOURCES

Collective bargaining attempts to redistribute resources. When bargaining concludes with an agreement, the share and control of resources by the bargaining parties is different. While the parties occasionally enter the bargaining process with exaggerated demands for change, and occasionally settle for the status quo, the most common results are alterations in relationships and reallocation of resources. The bargaining process pays little heed to what is required to generate future opportunities or to develop sources that sustain growth to ensure something for future distribution.

The most pervasive words in collective bargaining are "give", "offer", and "propose" for management and "demand" for unions. These words are good clues to what is expected of the parties. Management is cast in the role of guarding things that should be more widely shared. Unions are petitioners on behalf of employees for a fair share of things to which they claim rights. As roles are developed during bargaining, management modifies its offers and proposals and unions modify their demands. Both parties make concessions in the spirit of good faith bargaining. By now, managers are aware that their modifications and concessions represent relinquishing management rights. Unions make concessions by modifying, that is, reducing the magnitude of their demands. It is no surprise that, except in severe crisis situations, the final agreement is a reduction in the rights of management and some gain in union possessions. Each time an agreement is signed, the magnitude of change is less significant than the manner in which the characteristics of management are altered.

That collective bargaining produces alterations in the concept of what is managerial and in the managerial process itself is no surprise to those who pay attention to exchange processes. More are surprised, in the industrial sector for example, to find their competitive position steadily diminished, until management lacks the requisite control over resources to make market decisions that will ensure profits. In higher education the surprise emerges when those who occupy managerial roles are confronted with a steady reduction in their abilities to individualize or personalize decisions. This is especially true with regard to decisions that permit special rewards or recognition to individual employees.

While the terms "bottom line" and "profits" are not common to higher education managers as they form their goals, ready their strategies, and pursue their responsibilities, those managers must maintain a resource distribution system that supports a healthy organization. Higher education management operating in a unionized environment must come to grips with questions such as—

- What does the term "management" encompass in their particular organization?
- What constitutes the range of managerial attributes from the essential to the desirable?
- What distinguishes managerial behavior?

It is often stated that most of higher education's formal leadership is uninformed about or simply hostile toward basic managerial notions. While that observation may be a bit broad, since conditions are growing that promote the use of new managerial techniques and the borrowing of some well established ones, higher education management must "know itself" if it has any hopes for effective use of collective bargaining. Current expressions of dissatisfaction with collective bargaining are substantially rooted in vague, naive, and conflicting ideas about who is in charge of or responsible for different components of the university.

Chances for working effectively within a collective bargaining framework are enhanced substantially when there is understanding and acceptance of the following—

- Management is a mechanism for establishing goals, acquiring and organizing resources, and directing the use of resources to achieve goals.

- Management represents the interests of the whole organization including affected parties outside of those represented by unions, especially students and the general public.

- Management is a primary initiator of actions and programs in pursuit of organizational interests, and a determinative evaluator of initiatives from other sources.

Higher education institutions without collective bargaining can, and generally do, ignore the shifts from employee to employer leadership. The mechanics of traditional faculty governance systems meet their needs, although the thinner the institutional financing the more interest in new managerial ideas. Where collective bargaining imposes its peculiar imperatives on operations, however, those who deny the employee-employer reality are major contributors to bargaining agreements that pretend management is neuter, and that familiar relationships can be maintained notwithstanding new and different contractual definitions. Such pretense and self-delusion impede what management must be and do to maintain vitality through distribution of resources that promote long-term institutional interests over, but not to the exclusion of, short-term accommodations.

Because collective bargaining focuses on short-term needs, concerns, and issues, the process neither forces nor encourages serious decisions that explicitly take into account investments in areas of future import. In many instances, the future is shaped inadvertently or without serious discussion of organizational integrity. The bargaining mentality bears an unfortunate resemblance to the political legislative process. For example, organizational life is relegated to dealing with fiscal or contract years, oiling squeaky wheels, dealing with equity via across-the-board distributions, and avoiding the escalation of costs required for a new act.

It is incumbent on management to establish its leadership role by clearly articulating institutional goals and by specifying how management intends to pursue these goals. Once again, collective bargaining rests heavily on the premise that something of value will be moved from one party to another. The theory behind the process also includes the prospect that such movement will produce gains for both parties and the total enterprise. An examination of contracts provides little comfort for those seeking to add gains in productivity, time spent with students, innovation, or other areas often associated with enriched, extended services or enduring institutional strengths. The movement of valuables is overwhelmingly from employer to employee.

Unfortunately, the character of this movement appears unlikely to change merely because reasonable arguments can be advanced justifying such a change or suggesting that everyone's interests would be served by changes. Perhaps only calamities similar to those endured by the automobile industry in the late 1970's and early 1980's can promote a more common interest in maintaining a healthy source of future benefits for higher education organizations. Rather than wait for a crisis to persuade higher education of the major shortcomings of a process that pays scant attention to providing resources over the long haul, there is something more constructive and promising to do.

MANAGEMENT ROLE

Whenever collective bargaining is part of organizational life, there is an absolute necessity to identify what constitutes management. As is always the case in higher education, pluralism will prevail and management will have many identities. While such diversity has its own problems, an important objective is to identify who the managers are and what they do. Inelegance of expression should not deter boards of trustees, legislatures, or any other party to ownership and legal control, from meeting the responsibility of establishing who must at least represent the organization in collective bargaining. One might hope for a more comprehensive idea about how and by whom a place is managed, but even a limited investiture of managerial responsibility is essential to collective bargaining. Without management representation at the bargaining table, the process will need a new name.

If the organization's governing body is unclear about who the managers are and what they do, then collective bargaining is likely to have a nightmarish quality. Much of the agony often expressed when the impact of collective bargaining is discussed can be traced to mixed signals about what it means to function as a manager. There is no doubt that higher education is fertile territory for confusion about roles. The traditional forms for operating the higher education enterprise provide few useful guides for adapting an approach to employer-employee relations born and shaped in a sector from which higher education has been insulated. The terms used even sound strange, because they arose from some place other than higher education.

The major shock wave that accompanies collective bargaining arrives as the realization emerges that initial control over critical powers and resources is different. Especially in public jurisdictions, governing bodies find themselves statutorily invested by states with some powerful, explicit rights and obligations, not to mention the forest of rules and regulations with all the appearances of folklore. Private sector universities are likely to work within the better established framework built by federal legislation and practice. In most cases, however, institutions and their newly emerging managers, including governing bodies and their agents, are surprised and even overwhelmed by the new obligations of being in charge and the new prospects for sharing responsibilities.

Not surprisingly, most early responses of management to the new conditions associated with the legal separations of employers and employees, and to the necessity of conducting important business through the collective bargaining processes, tended to emphasize avoidance of change. Few higher education organizations responded to the arrival of employee unions by asserting management's rights to all things not excluded by statute or covered by a contract. Most look back to "day one" and wish for a different choice. But current leaders in higher education are generally committed to a long-standing approach to administration covered by terms such as "shared" or "participatory governance" and "collegiality." Their response at this critical moment favors an accommodation of tradition over a bold stroke. Thus, opportunities for fashioning a managerial role congruent with the new world of employee representation and collective bargaining are lost.

Reluctance to reach out for new management designs that might capture the nature of collective bargaining more effectively may be an impediment, but the process itself is shaping more realistic roles for management. Organizational change is known to be slow and is most often accelerated by a sharp external stimulus. Thus, management postures tend to reflect willingness to adjust to pressures as they come along. Management roles are created primarily by reactions to employee representatives who press their demands until a threshold point is reached for a particular organization.

Employees organize and bargain to obtain and maintain things they value within an identifiable organization. Since management represents the legal owners of the enterprise, management must articulate a clear statement of what is within the scope of bargaining. Statutes, rules, regulations, decisions, opinions, and practices all influence the scope of bargaining. Occasionally, the spirit of collegiality encourages the expansion of bargainable matters, thereby requiring the distribution of resources intended for the maintenance of managerial prerogatives and integrity.

Whatever the scope of bargaining, it represents the arena management must use when directing resources to organizational goals. If management accepts no significant responsibility for setting organizational goals and directing their pursuit, then the scope of bargaining will be fluid and management behavior will be dominated by responses to the demands of employee representatives. To the extent that management perceives itself as pursuing an organizational mission by strategic control of resources, the prospects for keeping the scope of bargaining reasonable improve. The spectacle of management responding to an avalanche of employee demands, created by including every interest in the package brought to the table, should dissuade those attracted to a laissez-faire approach to bargaining preparations.

The aim is to turn collective bargaining in higher education into a generator of new prospects. Current practice is to use collective bargaining primarily as a means of transferring resources from employer to employee. If perpetual motion were a reality, that practice might survive a long time with only modest disadvantages. Since resource generation within higher education is only now becoming a lively art, the current practice points more to conditions similar to those confronting steel and autos than those propelling computers. The shift required for higher education, if collective bargaining is to afford a window for long-term health, is for management to participate in the process committed to asserting its role as a prime initiator, as well as the traditional dispenser, of organizational resources. Collective concerns gradually overshadow the initiatives of individuals. The competition of many voices for influence and the impact of many individual initiatives must give ground when collective bargaining is the channel for defining relationships, power, and authority. Management initiative is the most underused yet promising, feature to emerge from the struggle to find a workable fit between higher education and collective bargaining.

FRAMEWORK FOR ACTION

The effectiveness of collective bargaining in managing and distributing resources requires that management's role accurately reflect the realities of the on-going relationship between employer and employees. Memories of how things operated before collective bargaining often translate into actions that impair those relationships rather than improve them. The prospects for recapturing the character of the relationships when faculty made the central institutional decisions are remote when collective bargaining arrives. The prospects for preserving past relationships, while adding new ones to deal with nonacademic matters (such as wages and working conditions) are little better, although those prospects are discussed with vigor.

Collective bargaining simply requires substantial changes in the relationships among professionals who choose this route. Those who inherit collective bargaining or who believe it has been thrust upon them fight hardest to avoid or deflect the impact collective bargaining has on their way of conducting their professional lives. Long resistant to pressures that impose restrictions on the freedom of professionals to exercise their own judgments, the higher education community works to avoid the importance of collective bargaining by continuing to rely on the blunting power of long processes and absorption instead of direct confrontation.

The growing interaction of higher education personnel with organizations and events outside of higher education should produce pressures for new arrangements. Higher education professionals have been crossing between their territory and that of different organizations regularly. Frequent passage encourages different perspectives and places new instruments at the disposal of the traveler. The status and security of the higher educational professional has slipped, and growth in rewards falls further behind for most. Since the prevailing systems for bestowing recognition and exercising power within higher education favor those with attributes that are neither easily obtained nor widely distributed, a new distribution and security system is attractive, even if borrowed with minimal critical appraisal from a different place.

These changes in relationships primarily affect the followers rather than the leaders among institutions. This is especially true with public institutions covered by state statutes permitting employee representation via collective bargaining. This explains the reluctance of affected institutions to come to terms with the central implications of operations affected by collective bargaining. While these institutions may not stand as high in the "pecking order" of institutional prestige, they still value the characteristics and style of the lead institutions. Caught by their own unwillingness to venture very far away, institutions and employees find collective bargaining more of a curse than anticipated, and seldom a vehicle for new opportunities.

The basic framework for effective collective bargaining in higher education includes understanding of the following components.

THE CONTRACT

The objective of a specific collective bargaining process is to produce a contract. The contract embodies the rights and obligations of the employer and employees (including employee agents), and defines critical relationships. Depending on the scope of bargainable issues, the contract can regulate behavior in both the minor and the major areas of institutional life. Few contracts exclude matters of considerable import, although conventions of academic governance sometimes are used to screen academic matters from direct control under the contract. Indirect control of academic affairs flows from decisions on such contract items as personnel evaluation, work assignments, seniority, outside employment, workload, and professional responsibilities.

Historically, management has had few explicit rights in higher education operations, and only rarely have substantial managerial rights been asserted. As a result the negotiated contract represents more restrictions and obligations for employees, especially professional, than prevail under non-contract conditions. Faculty rights had been well established by practice and faculty obligations were seldom described in a form comparable to the contract. The higher education community understood the most important rules, and informal arrangements were generally more important than contracts as guides to appropriate behavior. As long as someone was keeping the books, the important things could be handled by conventions that evolved from belief in the self-regulatory nature of a professional group.

While management previously unfettered by a contract could have expressed leadership in many areas, such has rarely been the case. The few college and university presidents who receive high marks for mobilizing their institutions and reshaping higher education stand out from the legions who merely served in ways that offended least. Those analyzing presidential selections now are raising concerns that the veto power of constituent groups favors a continuation of management leadership characterized more by balancing the rights of others than by asserting management rights.

Regularly presidents are reminded that they have both inherent managerial rights and rights under the contract. The problem is seldom that management deliberately exceeds or abuses its rights. The problems that dominate the grievance processes focus on the failures of management to observe the rights of employees as guaranteed in the contract. Management distress generally reflects pressure the contract exerts for the development of procedures that substitute adherence to form for individual arrangements. Both tradition and procedural issues deflect management from using the contract as a window to new leadership roles. Employee emphasis on contractural provisions keeps management occupied and away from more significant actions.

Contract language steadily replaces other kinds of communication, especially general, informal, casual, or confidential forms. Persons accustomed to sharing information informally across employer-employee lines are surprised to find that frequently generous, friendly gestures generate grievances rather then appreciation. A principal casualty of the authority of contract language is the expression of personal opinion or judgment by a manager in an area even lightly touched by the contract and related statutes. Since the contract is the sole or principal document that third parties use in resolving disputes between employers and employees, all parties quickly learn that adherence to contract language is valued more than attempts at creative solutions. It is not unusual for both employers and employees to find that their joint agreement to resolve a difference is blocked because it does not conform to the contract.

Not surprisingly, the contract has two edges. One is an impediment and a strait jacket; the other is an opportunity for management to develop leadership roles based on the explicit responsibilities. Those who see contracts only as strait jackets, the majority, are those who moan about the impact of collective bargaining. The occasional voices of optimism come from those who believe management initiative can develop the substantial territory allocated to it by collective bargaining.

THE INDIVIDUAL

Industrial employees seldom see themselves as responsible for management or as individually effective in representing their interests. Separating employer and employee comes naturally, and joining employees together to pursue collective interests proves more effective than going it alone. Different attitudes shape the higher education community. While higher education has a variety of employees, the influence of professional status, especially that of self-directed faculty, produces an environment that recognizes and nurtures individual efforts. Consequently, individual voices and actions are encouraged, and the belief that the faculty is the institution makes distinctions between ownership and management difficult.

Collective bargaining, unit representation, conditions of employment, bargainable issues, and similar terms dealing with employer-employee relations point to potential problems for an organization that tolerates or hails the cacophony of competing ideas. Faculty, in particular, have enjoyed substantial opportunities to do and say what they believe is important, and they have enjoyed more immunity from responsibility for what they do than most people.

Both myth and memories sustain the notion that individuals make personalized employment arrangements with institutions. In public institutions with personnel classification systems, salary ranges, and central oversight, the degree of personalization is more limited than the post-collective bargaining laments might indicate. Whatever the controlling conditions were before collective bargaining, they provided opportunities for personalization and individual treatment that generally disappeared with the contract. This form of negotiations moved into a new area where more interests must be taken into account and where equity means treating everyone the same. Management interest in dealing with an employee directly is constrained by the existence of the employee representative invested with contractual rights to do the talking and listening, and by the constant threat of grievances and unfair labor practice charges.

Whether measured as a gain or a loss, the status and role of the individual has some new features. The individual has a spokesperson who represents the interests of a unit of employees. Individual interests are protected within the framework of collective interests. Adequate performance or meeting minimum standards has precedence over individual excellence. The list can be made longer. Behavior must be modified with the result that employee participation in managerial functions is reduced and the individualization of relationships between employer and employees is severely limited.

The restriction on freedom of individual action inherent in collective bargaining may slow its expansion to institutions where faculty and staff professionals prize their individuality and are convinced that they have qualities that will withstand comparisons and competition. Those restrictions, however, strongly influence the style and content of operating relationships in institutions where collective action appears to offer benefits individuals could not gain unaided.

THE DELIVERY

Commonly, as the parties initially enter the collective bargaining process, each takes stock of things already possessed and lays claim to what each thinks it should have. In the industrial sector, management generally has laid claim to nearly all the resources and their control, and labor has set goals for shifting resources through a strategy that requires management to make concessions. The major difference in this starting relationship in higher education is the reluctance of management to lay claim to rights of control. The storehouse of resources higher education management believes it starts with seems to contain modest stocks. Faculty strategy in collective bargaining reinforces management's sense that collegiality means significant faculty control over critical decisions. It also focuses on acquiring more financial rewards and job security.

While some higher education management recognizes that the traditional distribution of control and resources between employer and employee puts them at a disadvantage in collective bargaining, they find changing the original die beset with frustrations. Asserting that management has rights it must exercise for its own integrity and the interests of the whole institution creates new excitement and prospects for collective bargaining, but it has yet to force more realistic negotiations in higher education. Additionally, when third parties are called upon to deal with boundaries and rights, the predisposition to continue what exists is overwhelming. Since management rights in higher education are generally undeveloped, the initial advantage in collective bargaining goes to the employees who already possess both managerial and nonmanagerial roles.

Early collective bargaining produced contracts that maintained the mixture of roles for the employees with professional status. Perhaps the long-standing confusion over the roles of faculty chairpersons illustrates the reluctance of management to come to terms with the requirements of its role in collective bargaining. Reinforced by legal decisions and growing insistence of accountability, management more frequently participates in collective bargaining with an increased awareness that it is expected to do more than find new ways to meet employee demands. Some newer contracts reflect management rights and expectations. The next step may even include the emergence of managers who administer the contract as though it imposes responsibilities on both parties.

The clear definition and mutual understanding of employer-employee roles are prerequisites to effective collective bargaining. Staying loose may serve free-flowing deal-making, but that attribute produces contracts that enrich lawyers and bedevil personnel officers. Armed with roles they understand, the parties can tackle the redistribution process with some confidence that they will emerge with recognizable shapes.

Responsibility for replenishing supplies that will be the objects of later negotiations rests with management. Rarely has collective bargaining been highlighted by the parties' attention to generating new resources. An occasional nod is given to increased productivity, for example, as a sign of concern that the delivery system might run dry or that employees have responsibilities for generating new resources to maintain a healthy organization.

It is essential to bear in mind that employee representatives derive their positions and power from their abilities to deliver what their constituents want. The right to lead and speak for employees and to use their collective power is closely related to success in gaining new resources every time a contract is negotiated. Telling constituents that the well is dry will be tolerated only a few times. Asking them to give back something they already have is acceptable only in dire circumstances. Coming back empty-handed will not work. Thus, the pressure to move resources from the employer's hands to those of the employees with scant attention to how resources are created is inexcusable. Unchecked, the process has a natural outcome: collapse of the organization. Borrowing concepts of collective bargaining from the industrial sector may also mean inheriting the negative characteristics of employees' failure to reinvest a fair share of their gains. Without perpetual growth to mask the ultimate consequences of constantly moving resources to respond to short-term demands, the process runs down. Higher education is searching for new outside investors to maintain or restore its health. The more distressed may even be looking for saviors. Unfortunately, collective bargaining may only take new resources and deliver them over the same routes that have not yet produced a solution.

THE HORIZON

"The future belongs to those with vision and with plans that match those visions." Futurists describe exciting prospects, challenges, and new worlds. Planners are busy preparing individuals and organizations for the journey. Meanwhile, public funding, which supports the bulk of public and private higher education in various ways, is allocated for the short term—the inevitable fiscal year. And the collective bargaining distribution system, which dominates part of higher education, is preoccupied with who gets what for the terms of the contract—probably one to three years, with reopeners if some new prospect pops up.

The pressure to reach an agreement between the parties to collective bargaining is much greater than the pressure to take the future into account. Instead of using the future as a stimulus to distribute resources for a long trip, the parties to negotiations are more likely to rely on the future to overcome any mistakes made in the rush to agreement. Serendipity, and the belief that the future will take care of itself once the negotiators take care of immediate problems, provide a substitute for dealing with possibilities. Pragmatism and past experience dominate negotiations, especially if the objective is a successor contract. Even poorly drawn and inappropriate articles are ignored if they have not created problems during the term of the contract. "Improvement" is used to describe gains to the parties more than as a concept dealing with the direction of an institution.

The puzzle posed is finding ways to moderate the effects of the limited horizon of the collective bargaining process, while tending to institutional health. The responsibility for solving the puzzle falls primarily on management, for the obligation of institutional stewardship, often including clear legal and fiduciary responsibilities, is a critical aspect of differentiating management from others in an organization. Management that views its rights narrowly will find few chances to establish planning horizons on general conditions in higher education beyond those accommodated by the reach of collective bargaining. An extended horizon is dependent on management initiative.

The opportunities for management initiative are enhanced as the parties develop reliable patterns of interaction, often through a series of negotiated agreements with employee representatives who retain leadership positions for extended periods and who are replaced through well established processes. Volatile leadership offers few opportunities for engaging attention for long-term issues and goals. Without management insistence that the terms of a contract not define the boundaries of the future, collective bargaining can easily consume energies that could be applied to strengthening institutional vitality. Collective bargaining and contract administration are both activities that easily expand to fill whatever time is available.

Collective bargaining provides a framework for defining important, but limited, aspects of institutional life. Management that permits collective bargaining to exceed its assigned domain invites restraints that will narrow institutional horizons and reduce institutional prospects.

CRITICAL OPERATING GUIDELINES

Earlier this chapter suggested that if management does not respect the importance of knowing itself, the collective bargaining process will not work well. If neither party has a grip on its goals, the process is likely to value present circumstances and the short view more highly than the future may warrant. The results may accommodate present interests and distribute available resources, but may set in motion growing requirements or create a legacy of obligation that effectively spends the future resources before long-term goals come into sight. Therefore, it is important to know where to go, or at least to have a sense of direction, along with knowing where one is. In most operations, those who have set goals fare better than those who play by ear, or even those who rely on muddling through as an art or quasi-science of management. Early collective bargaining contracts feature the shortcomings of arrangements made by persons who prized their own skills for teasing reason out of a new adversarial relationship, who were confident that they understood the true nature of the academic community, and who believed that the power of tradition precluded significant changes in the conduct of higher education based on discussions with employee representatives on wages and conditions of employment. Seldom do those contracts display markings suggesting that the author sensed they were establishing patterns that would be reused and would increasingly shape the character of future relationships of the parties covered. Likewise, evidence is absent that the parties came to agreement alert to the implications of the contract on institutional goals.

Because the extent to which the agreements reached via collective bargaining would influence participating institutions became a matter of serious interest after experience with one or more contracts, even institutions that claimed to have clear goals made few contractual provisions to promote their vigorous pursuit. For those institutions struggling to clarify goals or inattentive to planning as a feature of management, their first contracts reflected conclusions seemingly appropriate for the time, commitments that would be continued and would increase in costs, and nary a hint that the basis for these relationships was getting the institution to where it must go.

It is said enough to be believable that small phrases in contracts control the most significant resources of an institution. In personnel-intensive organizations such as higher education, all commitments made to employees via the contract possess a power that cannot be ignored when assessing the prospects for moving an organization toward its goal. Even if collective bargaining is constrained by tight limits on bargainable issues, by an assertive management, or by extensive shared governance systems, the resources that must be committed by contract strongly affect the capacity of institutions to pursue their goals.

Given the fact that a bargained contract regulates the distribution of a critical share of institutional resources, the importance of proceeding within the framework of clearly stated institutional goals and plans for their pursuit is heightened. The dangers of collective bargaining dominated by artistic freedom for the negotiators, with only broad objectives for guidance, offset the prospects for gain from on-the-spot creativity. The artful, creative negotiator is welcome to represent the interests of both parties against a backdrop of requirements for institutional health.

It is the inescapable responsibility of management to state institutional goals and to identify the resources and operating conditions essential for their attainment. There are different processes available to institutions to set goals. Whatever the process chosen, management must insist that the alternatives offered by collective bargaining be evaluated in terms of their impact on those goals. If management does not insist that institutional goals shape collective bargaining, the field is wide open for contractual arrangements that nourish present appetites while starving the future.

The first imperative is to establish institutional goals as an integral part of collective bargaining. The same characteristics of higher education that hamper clarification of management and its roles work in favor of integrating institutional goals. The blurred divisions of authority have supported some aspects of community for higher education not prevalent in other unionized organizations. The porous nature of organizations in higher education institutions permits and nurtures a mixture of differentation by function and common identification with a distinctive way of life. The balance may be precarious from time-to-time, but it provides a basis for sharing.

The long standing practices associated with shared and participatory governance, collegiality, and consultation maintain an existing body of shared goals for most institutions. These same practices and the attitudes they reflect offer routes both for infusing existing shared goals and for developing goals into that part of institutional life regulated by collective bargaining.

It is management's responsibility to direct the bargaining process to a distribution of resources within the scope of bargaining that will support the steady pursuit of shared goals. If bargaining turns toward issues of shared management, the train is off the track. The task is not only getting back on track; it is also one of continuing the movement to strengthen management's role as steward of institutional purpose. Both the unexpected, slowly emerging direction of collective bargaining and its influence on management are grounded in the opportunities presented by a tradition of sharing and the explicit nature of a contract.

The potential for troubled relations increases when the choice is made to pursue shared management rather than to proceed along the track toward a clear management responsibility for defining the conditions for a healthy organization that will serve employer, employee, and client. The sorting out of "who's responsible for what?" and "who's in charge?" cannot be deferred without facing an even deeper thicket later. The goal is to develop roles for the parties that realistically reflect their actual responsibilities for the organization.

Healthy pursuit of institutional goals is a basis for assigning roles that will help the collective bargaining process to be both responsive to current concerns and protective of longer term goals. Help comes first in terms of attitudes of each party toward the other party. To establish supportive attitudes means delivering what was promised. That is not a surprising statement, yet achieving that result has been complicated by a tendency of both parties to enter bargaining with positions that have little connection with reason or reality, and proceeding to conduct bargaining for a substantial time as though some script required irrationality. Granting that such an approach occasionally yields some unexpected gem, it hardly encourages consideration of issues as they impact institutional goals; nor does it suggest that anyone is believable.

Well understood roles for the parties can be developed within a framework of shared goals more by practice than by fiat. While the necessary forms of organization, the basic rights and obligations, and the correct conduct of the bargaining parties can be described in the abstract, the fact that higher education either started without the customary prerequisites for collective bargaining, or neglected to start at the beginning and ended up going forward and back to the beginning at the same time, has muddied the waters. The chance to work from a rational model appropriate to higher education from the outset has slipped away, and building a process or system as the parties go along has become the dominant approach. Individuals who have any actual experience with collective bargaining have become gurus in the field, and some salvaged nondescript careers by fashioning organizations and conferences to swap stories.

While those who came to the practice of collective bargaining first may have overreached the conceptual base for their practice, they and those who continue to arrive are finding the essential ingredients for effective collective bargaining in a framework of materials with unfamiliar and dissimilar properties:

- employer/management, with rights and obligations that encompass institutional goals, resource development, and leadership initiative.
- the individual, whose rights and interests are collected and joined with those of others and for whom personalization is diminished.
- the contract, which makes explicit and binding rights, obligations, and relationships that replace self-regulation with the authority of third parties, and which constrains vision.
- the higher education community, with its urge to distinctiveness and its deep roots in traditions of sharing and joint responsibility.

The practice of collective bargaining within a framework of these influences affords the parties room for developing the resources and potential of higher education. Institutions that live with collective bargaining already have a different status. Frequently, that difference is considered an affliction. While collective bargaining has not been recognized as an asset, nor is it likely to be a proudly worn badge, it must be used as an instrument to exploit the differences it creates.

CLARITY OF RELATIONSHIPS

Too often the conclusion is reached that the clarification of employer-employee relationships via collective bargaining means imposing a straitjacket. The contract makes explicit significant aspects of those relationships; however, the contract does not control the dynamics of those relationships. To the extent that collective bargaining clarifies authority, responsibilities, obligations, roles, and basic procedures, it reduces the losses from ambiguity, uncertainty, inconsistency, and trial and error. In organizations with lives that extend beyond those who are part of it at any specific time and that conduct activities affecting people beyond its formal organizational boundaries, substantial benefits are derived from order and reliability. Both tradition and contracts are sources of these benefits. Thus, the potential value, not just the obvious importance, of the roles required by collective bargaining and the contract should not be missed because annoyance with the restrictions of collective bargaining crowds out suggestions that constructive actions are now possible.

Certainly there are widespread preferences in higher education for operations guided more by practice than by formal regulations. For many institutions, however, unstated obligations and traditional relationships have not served adequately. Thus, relationships have been restated and formalized, complete with some important instructions. If the new operating rules are applied intelligently, instead of being used as a basis for sophisticated gaming, the burdens of unfamiliarity gradually become regular operating procedures. Consistency and reliability are not only for dullards, they are also essential to using energies to move on to new goals rather than retracing old steps.

The simple idea that you should make what you know work for you is applicable here. The collective bargaining contract helps inform the affected parties on selected matters of importance. Knowing the rules of the game is considered essential to effectiveness in most instances. If that is so, having the same rules written down should have some potential for help. Resistance to the forms, procedures, and rules associated with collective bargaining is probably a greater impediment to gaining advantage from the increased clarity about who is responsible than is the contract itself. The contract is an inevitable outcome and it must be managed to gain the most from what it makes clear, as well as what it does not cover.

MANAGEMENT AS A SOURCE

Collective bargaining offers management new opportunities to be a source of initiatives, ideas, actions, information, and even control. The idea that higher education is susceptible to management and that some may be especially qualified to manage has been steadily emerging in higher education—complexity, new roles, and new resources all have contributed. But collective bargaining has proved a propellant for managerial development.

Management is needed to be across the table, to be the other party to negotiations and to the contract. Because law and custom define management and invest it with rights and responsibilities in collective bargaining, a door of opportunity opens even wider. Despite blinking eyes and other uncertainties of management in the new light, management has important things to do beyond keeping the books and meeting the payroll. Now management has real power to steer an institutional course.

Sensing new prospects, some people in management positions have assumed that the new power was personal and was an avenue for them to have their ways. They are the failures. Most have let the new prospects for institutional leadership lie dormant; basically reacting to the demands of unions by seeking maximum accommodations with the past. They spread most of the gloom about the negative impact of collective bargaining in higher education. Obviously, the creative managers have measured the opening for leadership and are using the new managerial opportunities to bend resources toward the good health of institutions. Collective bargaining pushes some one person into responsibility for the whole, so that individuals will benefit from healthy organizations.

While management in higher education remains tempered by the strong influences of community, collegiality, participatory governance, and other forms of sharing, expectations are growing that management will develop positions representing institutional interests, that managers work for and are responsible to boards and public bodies. Increasingly, management must engage in collective bargaining by putting forward management positions and proposals that reflect institutional goals. As the resource pot available to management has gradually emptied through responses to employee demands, the realization has arrived that collective bargaining requires management to develop strategies that include pursuit of their goals. The measure of success could not long remain how little was lost or given; thus, pressure has grown for management to be a source of proposals that extend the horizons of collective bargaining.

THE JOB IMPERATIVE

No doubt employees believe collective bargaining produces an additional shield for job security. Professionals may show signs of discomfort in straightforward discussions about protecting their jobs through unionization, but unions find themselves expending much of their time and energies in protecting both the competent and less competent from many actions they believe impinge on the employees' rights to some aspect of their jobs. Keeping a job is a high priority for an employee; keeping jobs is the life-blood of a union.

Because jobs and work are central to institutional existence and operations, management and employees have a shared goal that can be used to influence substantially the collective bargaining process, the quality of the negotiated contract, and the pursuit of external support. Both the day-to-day business of the organization and the collective bargaining process must demonstrate the interdependence of institutional resources and jobs. Employees should not be permitted to be uninformed or misinformed about the operation, conditions, and prospects of the organization. Close examination will undoubtedly disclose that there are few true secrets that cannot be revealed. Further, full disclosure of those things that most affect job status is more likely to produce reasonable responses than is surprise and suspicion.

Individual employee complaints and grievances may well rank as major annoyances of life under collective bargaining, but common interest in maintaining or enhancing staffing levels and jobs is an attractive avenue for enlisting employee support for institutional goals. Those bothered by the adversarial features of collective bargaining in a community dominated by professionals should find hope in this opportunity for deriving benefits from a circumstance that otherwise disrupts long-standing relationships.

FOCUS ON CLIENTELE

The emergence of management as a source of ideas for institutional health, the growth of management as an active force in organizing resources to achieve institutional goals, and the connections employees begin to make between long-term institutional vitality and their own prospects (as opposed to general professional recognition) all contribute to a new focus on clientele. In the worst form, interest in clientele smacks of a simple head count: Are there enough clients to provide money to meet the payroll and to keep the doors open? While survival is a basic interest, the unrestrained pursuit of survival by some institutions has stimulated modest calls for self-policing, and a sprightly business for those claiming skills in "managing decline".

In its more promising form, looking after the interests of students and other users of higher education services leads to stronger support and greater attention by employers and employees to finding new routes to improving the quality of their services. Collective bargaining is a perfect forum for making the connections between pay, working conditions, governance, evaluation, etc., and what happens to institutional services as each compromise is made and each agreement reached. Unimaginative management and selfish employees may appear to have dominated collective bargaining in most contracts. But as the walls of job security get so high that the profession begins to lose new blood and total jobs decline, and as support sources, especially public sources, find more compelling services to support, conditions favor paying more attention to clients. Collective bargaining is a formalized process for tackling issues that affect the capacity of educational institutions to invest resources in maintaining client demand.

Government and private support offer little promise for long-term relief and renewal. Because client commitment means both immediate help in the resources their participation produces and long-term help in broadening the role of higher education in society, the pressures collective bargaining exerts for providing services to maintain clients can be exploited for improvements. As collective bargaining relationships mature, process serves as a means of developing shared responsibilities for institutional health. The clients now become recognized beneficiaries as well as supporters.

CHANGING EMPLOYEE ROLES

As the collective bargaining process deals with distributing resources, it opens doors for laying institutional issues before both the employers and employees. Not only do employees see that there are direct relationships between institutional health and goals and their own interests and jobs, but employees are nudged into accepting responsibilities for participating in the solution of problems, including facing new roles in concert with management. The tradition of shared responsibilities is strong in higher education. While that tradition often is either misapplied or abused in the first stages of adjustment to collective bargaining, its value assumes renewed importance as collective bargaining emphasis shifts from the simple matching of resources to demands to the complex matching of resources to goals. This latter involves deferring rewards, stimulating improvements, making qualitative changes and choices, and other actions that blur the distinctions between employee and institutional interests.

The effective participation of unionized employees in the advancement of the institution depends, first, on establishing substantial common ground through developing institutional goals and, second, on achieving credible statements of institutional capacities. Neither is easy to achieve if management approaches collective bargaining with exaggerated tales of woe and elaborate disguises for hiding resources. Neither tactic works for very long, nor do comparable approaches to employee demands flourish. Jump these hurdles and both the collective bargaining process and the on-going operating relations between management and employees can be vehicles for new solutions from employees and for constructive involvement of employees in handling such problems as a 50 percent increase in health benefits costs. Skeptical as many employers are that employees can help to solve and handle problems created by their "victories" at the table, they have no reasonable long-term alternative to altering employee roles so that what collective bargaining produces is both a fair share of gains and a defense against losses.

AN INSTANCE

One instance does not represent reality for everyone, nor does it confirm every generalization. One instance can illustrate the guiding principles and arguments advanced, however, and should aid those who are responsible for making collective bargaining as productive as possible. The illustration used is the Vermont State Colleges—a public system of five colleges governed by a single Board of Trustees through a Chancellor to whom the five college Presidents report. The full-time faculty and librarians with faculty rank of the four campus colleges are organized in one unit and the regular, non-administrative staff employees are organized in another unit. Both are represented by local chapters of the American Federation of Teachers. Excluded are employees of the non-campus Community College of Vermont. Negotiations are conducted under the direction of the Office of the Chancellor and contracts are applicable to represented employees at all four campus colleges. Statutes designate the Board of Trustees of the Vermont State Colleges as the employer; provide a broad scope of bargaining; and assign unresolved grievances and unfair labor practice complaints to the Vermont Labor Relations Board with rights of appeal to state courts.

This illustration is drawn from the relationships between the Vermont State Colleges (VSC) and the Faculty Federation over the 10-year period 1973–1983. Collective bargaining with staff representatives began in 1979. Clearly, the commentary abbreviates the development steps and simplifies complex matters. The point of the illustration is to capture major evolutionary features of a collective bargaining process as it matures.[1]

PHASE ONE: 1973–1976—CONSTRUCTION

A 1971 state statute contained the authority for collective bargaining. Low faculty salaries and a perception that a disproportionate share of available resources were spent on administration provided the impetus for collective bargaining within VSC. Through collective bargaining, faculty believed they could obtain higher salaries through a reallocation of resources and by drawing public attention to their economic situation.

Operating control in VSC was decentralized to the colleges, to the extent that the arrangement could be characterized as a confederation rather than a system, despite the fact that full statutory control was vested in the VSC Board of Trustees. Both the college administrations and the Faculty Federation representatives viewed this arrangement as a practical way to offset or avoid the tendency to move control to the center of contracts to centralize control. During negotiations for the first contract, they acted to retain the maximum local control, with the result that important decision-making powers were actually identified in the contract and were specifically assigned to college Presidents or were assigned to bodies that included both administrators and faculty.

The first contract did the expected. First, it shifted economic resources from management to faculty in ways implying that management had unfairly withheld such resources because they felt under no special pressures to be more generous, rather than because those resources were essential for the attainment of institutional goals. That is, it implied that management would not be fair in the economic sense unless demands were placed on them.

Second, the contract mixed union representation with faculty governance mechanisms. The possibility that the two approaches to faculty representation and involvement might be different or even potentially in conflict was not evident. Thus, considerations about changing roles were not apparent. Apparently, collective bargaining would not alter customary ways of doing business as far as the first negotiators, could see. As time passed, the limits of their vision began to show.

Third, while it was expected that most personnel decisions would be made by the college Presidents with the advice of faculty, the willingness of the Board of Trustees to forego rights of review and possible veto of presidential actions was surprising. This lapse within management contributed substantially to actions taken five years later to reestablish the authority of the Board of Trustees and redefine the roles of its principal agents.

The power of the status quo is not easy to overcome in collective bargaining. Once something is agreed to and finds expression in the contract, the party seeking to make a change has virtually all of the burden to justify a change. Additionally, the magnitude of change is likely to be small. Therefore, each subsequent phase in relations between VSC and the Faculty Federation owes much of its character to the first construction.

PHASE TWO: 1976–1978—ACCOMMODATION

Increasing financial difficulties for VSC were reflected in bargaining for a second contract signed in December 1976. Compensation changes were modest. The principal development was the growing efforts of management to respond to increasing difficulties by accommodation. Rather than face difficulties and seek solutions through collective bargaining, management sought to wait for better times for relief. While waiting, the major tactics were to pacify faculty by extensive consultation, to avoid enforcing policies and maintain disinterest in asserting management rights, and to expend reserves and USC deficit financing. The wait was too long, the tactics did not prove successful and by 1977 VSC's financial troubles were severe enough to prompt intervention from both the Governor and State Legislature.

The period of accommodation eroded management authority and contributed to faculty concern and anxiety about their futures. By any standards, VSC was mired down and perhaps even sinking. While unionization was not the cause of poor institutional performance, the processes of accommodating this new relationship distracted both VSC and the Faculty Federation from issues and actions that needed immediate attention. By the time negotiations for a successor contract had begun, awareness began to take hold that a simple rearrangement of deck chairs might give the appearance of new order and of possible relief, but it would not make the ship sail into any port.

PHASE THREE: 1979–1981—CLARIFICATION

The time was ripe for clarification of the roles of management and the union. But the existing contract provided little guidance, and management practices had generally avoided assertion of leadership roles or final authority. Negotiations for the third contract were highlighted by a sharp shift in the approach of VSC. Constrained both by the contract and by practice, VSC tested the ability of collective bargaining as an avenue for reclaiming management authority already relinquished. It was no surprise to find that little could be recovered via that route; but the effort itself sent a message to faculty that management was serious about strengthening its role.

Next, VSC developed a full range of new proposals for rewriting the contract. Rather than spending most of its time responding to Faculty Federation proposals, the negotiations became more balanced discussions of the needs of both parties. Further, the VSC proposals clearly identified system goals and reflected activist roles for management.

Further, confrontations in the form of strict enforcement of policies and contract provisions, aggressive pursuit of grievance and court actions, calls for new legislation affecting labor relations, and similar strong VSC actions all sent the message that a significant turn away from the past was necessary. Substantial improvements in management performance provided evidence that management could be trusted and that the best prospects for collective bargaining were linked to successful management.

The clarification process was contentious and unpleasant because it meant undoing familiar arrangements without assurances that the results would be beneficial. The testing of limits and confrontation techniques clarified roles with some pain and suspicion. The antidote to both was credible, reliable management for the long haul.

PHASE FOUR: 1981–1983—COOPERATION

Although 1981 had been preceded by acrimonious bargaining, mediation, fact-finding, final offer arbitration, contract extensions by the Governor, legislatively imposed settlement, considerations of new labor relations laws, and the inevitable court apearances, the mood by 1981 was cooperation. The bad times were memories more than scars. The efforts to clarify both the collective bargaining arena and the roles of VSC and the Faculty Federation had produced new operating relationships.

Negotiations for the fourth contract were preceded by informal discussions on new policy issues and innovative compensation plans by the parties. The emphasis was on improving the quality and attractiveness of VSC by balancing the economic needs of faculty with the use of institutional resources to pursue long-term institutional goals. The negotiations themselves were conducted in accordance with a pre-determined schedule. In contrast to all preceding negotiations, they ended on time with agreement reached by the parties.

What can be sifted out of this instance that suggests general applicability?

1. Since collective bargaining is a long-term relationship with enduring consequences, the attitudes motivating the parties initially and the first contract they sign set conditions that will control the nature of future relationships and the pace of their maturation. Every subsequent negotiation starts from the preceding contract and the most serious attention is given to matters that have caused problems for the parties.
2. Collective bargaining encourages steady, evolutionary behavior. Thus, it is critical that the parties, especially management, have long-term goals, which are pursued by a steady stream of modest, incremental actions. Management must participate in collective bargaining with the intention of driving the evolutionary machine along a path that sustains general organizational well-being. Transplants and other dramatic actions occasionally pick up the pace or check a drift, but they do not produce new organizations. Again, while collective bargaining may produce dramatic flashes such as strikes, it does not sustain high drama.
3. Draw clear, reasonable lines that accurately reflect the conditions and needs of the parties. Proposals and demands fashioned within boundaries that are understood and withstand scrutiny steadily improve in quality. The immature parade out threats during negotiations. At some point, obviously the earlier the better, the parties come to grips with their mutual importance to the business of providing the resources and balancing their distribution so as to maintain the organization.
4. Establish a clear management role, pursue those rights and responsibilities that define management, and administer both the affairs of the institution and the terms of the contract without favor. Then, when exceptions are wise and accommodations of special needs are beneficial, the necessary flexibility will be available and the calls on future adjustments will be fairly calculated. As a continuing, evolutionary process, collective bargaining depends on regular trade-offs, so debts and obligations incurred because a current need is compelling are recorded and paid or redeemed as a normal part of future relations. Both groups and people who can be counted on to remember and meet their obligations are worthy of trust: collective bargaining "remembers".
5. Both collective bargaining and the contract ultimately increase pressure for the management and employee to do what each has promised. The benefits thought to flow from relations before collective bargaining can be replaced by benefits associated with predictability. They are not the same benefits, but the new dispensers and recipients can use them to form a basis for cooperative pursuit of institutional goals.

A COMMENT

If all were going well in higher education, there probably would be less interest in importing an ill-fitting process such as collective bargaining to help in the distribution of resources. For a significant minority, whose ranks are being increased by the addition of large institutions, the more familiar ways of the majority proved unsatisfactory. They are trying collective bargaining and are learning not only to live with the process, but also how to make it work more effectively. Disappointments have not become disaffections, to the point that those who hope "this too shall pass" can be optimistic. Experience will gradually provide a better fit between higher education and collective bargaining. For those so fitted, the message is clear and familiar: find the advantages and exploit them.

ENDNOTE

[1] For a detailed description and analysis of collective bargaining relationships between the Vermont State Colleges and the Faculty Federation, see: Margaret Ryan Williams, *Efforts to Change Labor Relations Structures and Relationships (The Vermont State Colleges)*, May, 1983. Doctoral thesis presented to the Graduate School of Education of Harvard University.

The Role and Function of Trustees and Presidents

By David J. Figuli

The role and function of the board of trustees and president of an institution of higher education do not change as a result of the introduction of collective bargaining into the employer-employee relationship.[1] This is true regardless of public or private institutional status. Their pre-eminent functions of policymaking and policy execution are not obviated by the introduction of collective bargaining. Indeed, those functions, especially in regard to human resource relations, are intensified. There are functional changes, however, which are ushered in with the advent of collective bargaining.

The functional changes are the result of a number of new policy determinants introduced by collective bargaining. Those determinants must be taken into consideration by the board of trustees and the president in developing and implementing policy that affects the subject matter of bargaining. Indeed, many of those determinants mandate certain policy decisions or severely delimit the scope of policy discretion within which the president and the board of trustees may operate.

In order for the board of trustees and the president to properly function they must be cognizant of, and account for, those new determinants. This is especially true if those traditional objectives of higher education management (e.g., quality of instruction, scholarship, efficiency of operation, and service to the public) are to be achieved. This chapter will identify the most common determinants introduced by collective bargaining as related to the functions of boards of trustees and presidents.

It is not the intent of this chapter to clearly define the functional relationships between the board of trustees, the president, and the chief negotiator or labor relations professional. This chapter identifies the policy determinants and considerations in each area of the collective bargaining process of which the subject offices should be cognizant. The distribution and delegation of the requisite tasks and responsibilities in each policy area will vary based upon the available staff, operational history of the institution or system, organizational structure, size of the institution or system, composition of the bargaining unit, and geographical limitations. In large systems, there tends to be a greater delegation of authority and functions to the labor relations professional with less frequent and direct involvement of the board. In small systems and institutions, the same matters generally are more directly supervised by the president. These are, of course, generalizations, but they nevertheless reflect some consensus as to appropriate management practice.

THE LEGAL FRAMEWORK

The legal framework that initiates collective bargaining introduces the most stringent policy considerations. It is, therefore, imperative that the chief policymaking and execution functionaries have a sound understanding of those considerations. The following is a brief overview of the legal formulation encompassed by the term "collective bargaining."

The essence of the legal imperative of collective bargaining is the requirement that an employer deal only with his or her employees collectively in establishing the essentials of the employer-employee relationship. Those dealings of the employer must be channeled to the employee collective through the employee's designated representative. That designated representative is, of course, the labor organization or the union. Employing legal nomenclature, the union is the exclusive agent and the employee collective the principal. Each individual member of the employee collective is bound by the agreement reached between the employer and the union. Similarly, the employer cannot breach the collective agreement in dealing with individual employees.

The first step in achieving the right to bargain collectively is referred to as the organizational and recognitional stage. Under statutory procedures, either a group of employees seeks to organize themselves and to designate a representative, or a pre-existing labor organization seeks to organize a group of employees and to have them designate it as their representative. The first obligation of the organizers is to designate the collective, or "unit", that is sought to be organized and then to obtain an expression of interest in being represented by the designated representative from a statutorily prescribed percentage of the members of the unit (usually 30 percent).

Upon obtaining the required percentage of unit-member authorizations, the organizer then proceeds to file a request for certification with the appropriate jurisdictional agency, which in the public sector is generally referred to as a "perb" and in the private sector is the National Labor Relations Board. Upon the petition for recognition being filed, the employer has the option of voluntarily recognizing the designated representative or denying representation and forcing an election to be held. The employer also has the option of either accepting the proposed unit or contesting the appropriateness of the unit and forcing the jurisdictional agency to make a unit determination.

If the appropriateness of the designated unit is contested, the issue is placed before the jurisdictional agency for a decision after a hearing. Once the agency determination is made and, in some cases, appeal rights are exhausted, and in the absence of a voluntary recognition on the part of the employer, an election is held.

The election is conducted by secret ballot and all members of the designated unit are entitled to vote. Where only a "one-agent" and a "no-agent" option are given to the voters, in most cases, a simple majority of those voting decides the election. In a minority of states, a simple majority of the total membership of the bargaining unit must be obtained in order to elect an agent. If an agent is selected, the jurisdictional agency issues a certification, which generally grants the selected agent the incontestable and exclusive right to represent the members of the unit for a 12-month period.

The representative having been recognized, the duty to bargain devolves upon both the employer and the employee representative. That bargaining must be conducted in good faith and must address all mandatory subjects of bargaining placed at issue by either of the parties. The bargaining process results either in a ratified agreement or in impasse.

If a negotiated or arbitrated agreement is reached, both parties are obliged to observe its terms and provisions until its expiration or until it is modified by mutual agreement.

If impasse occurs, a variety of conflict resolution techniques may be imposed by law upon the parties. Those techniques include the non-binding processes of fact-finding, mediation, conciliation and arbitration, the final and binding process of interest arbitration, or permutations and combinations of any of these processes. If only non-binding processes are mandated and no agreement is reached, the employer may generally unilaterally implement only the best and final offer that it made to the employees during the course of the negotiation process. On the other hand, under the same conditions, some employees are given the right to strike.

The policy determinants and considerations raised at each of the foregoing steps in the collective bargaining process are both complex and varied. They are a function of statute, employer, employee idiosyncrasies. The following is a discussion of those common policy determinants and considerations as viewed from the offices of the board of trustees and the president.

THE ORGANIZATIONAL AND RECOGNITIONAL STAGE

The advent of collective bargaining on campus initially evokes in the manager a variety of emotions ranging from trepidation to indignation to a sense of betrayal. It is often felt that the mere consideration by employees of the option of collective bargaining denotes an abandonment of professionalism and collegialism and the introduction of adversarialism.

When these emotions are rife, the board of trustees and president must surmount the passions and chart a reasonable course. The philosophical tone that they set with their policy decisions at this point will reverberate throughout the ranks and influence the type of organizational plan conducted by the union advocates. It is, therefore, imperative that these initial policy decisions be predicated upon documented fact rather than on meritricious myth.

The recognitional-organizational stage introduces the first fundamental policy decision required to be made by the board and president. This primary policy decision concerns the institutional posture vis-a-vis the organizational effort. The options are obvious – the institution may either support the effort, oppose the effort, or maintain a neutral position. Each alternative has certain practical considerations and ramifications.

Supporting a particular union's effort is particularly sensitive where more than one organization is contending for recognition. Management may not recognize one and may refuse to deal with others if each has obtained the requisite employee support to warrant its inclusion on the ballot in an election. On the other hand, if only one organization is involved, management may choose to voluntarily recognize it rather than force an election. Care should be exercised, however, not to invade the faculty province by such act. Voluntary recognition should, as a practical matter, only be extended where a clear expression of the faculty will has been evidenced in favor of the petitioning organization.

Opposing an organizational effort is a most sensitive task. Management is legally prohibited from using threats or promises, whether express or implied, to attempt to influence a "no-agent" vote. Management efforts should be limited to the dissemination of information and expression of opinions with the intent of assuring that the targeted employees have all of the facts and points of view relevant to their decision. Practically speaking, the expression of opinion against organization from certain members of the management team may do more harm than good. The probable effect of each communication should be carefully weighed. Opinions should be directed from positions that have previously enjoyed a relationship of trust and open communication with the affected employees.

Even if management has a true and fundamental opposition to collective bargaining and expresses it during the organizational effort, it must be remembered that the duty to bargain arises by operation of law and not by the desire of the parties. Further, it is solely the employees who determine whether that duty will arise. Management must never express or imply an unwillingness or inability to work within the collective bargaining process if the employees exercise that choice.

A position of neutrality is not necessarily an abdication by the board of trustees and president of their leadership roles in the policy-making arena. If adopted after knowledgeable deliberation, it often reflects a mature management perspective. It may simply recognize collective bargaining for what it is – an alternative labor-management relations methodology, which the employees have a legal right to select.

THE UNIT DETERMINATION STAGE

The unit determination process is often viewed as an opportunity for mechanistic manipulation rather than policy implementation. Management's objective should be to formulate a manageable unit rather than to gerrymander a union in the hope of producing a "no-agent" vote. The term "hope" is used advisedly since most attempts at predicting voting patterns are based on fantasy rather than fact.

The legally mandated criterion for unit definition is also an appropriate criterion to be followed by management in formulating its unit preference. The law generally permits the inclusion in a unit of only those employees who share a "community of interest." Policy-wise management should seek to associate in any collective bargaining unit only those employees who share common policy patterns and objectives with regard to the subjects of bargaining, i.e., who share a "community of interest." Generally, they should be in employment areas that generate an identity of concerns and desires.

As a policy tool, management may seek to maintain or obtain distinctions in compensation, qualifications, working conditions, and professional or disciplinary relationships through the unit determination process. Traditionally, law and medical school faculty have been excluded from general faculty bargaining units because of such distinctions.

Perhaps the thorniest decision involves the determination of which administrative positions are supervisory and which are managerial. Such positions are generally excluded by law from employee bargaining units and are often denied collective bargaining rights. The board of trustees and president have a legitimate interest in maintaining the undivided loyalty of all people who will control or effectively control the implementation and administration of policy. That interest should be preserved through forceful and, if necessary, contested assertion of management prerogative by the exclusion of all supervisory and managerial employees from any collective bargaining unit.

THE ELECTION STAGE

The election process presents a segment that is uniquely beyond the control of management policy. It does provide, however, an opportunity for management and union cooperation, which, at least in a small way, may ease the adversarialness of the organizational process and introduce a potential for future cooperation. That opportunity is found in the joint encouragement of employees' exercise of their voice and vote. The speculation fostered by an uncertain election result, which can undermine future management and employee commitment to bargaining and contract administration, can be avoided by a full expression of all employee views on the soap-box and at the ballot box.

NEGOTIATIONS STAGE

Upon the certification of a bargaining agent to represent a unit of employees, the duty devolves upon management and labor to negotiate in good faith over the subjects of bargaining. The affirmative duty of initiating negotiations rests with the employee's bargaining agent. Management, however, should not await the union's demand for bargaining before commencing its preparation. Those preparations should begin at least by the time of certification but may prudently begin as early as the recognitional stage.

The board of trustees role in the negotiations stage includes the functions of establishing the organizational structure that will administer its bargaining duty and the policy parameters that will dictate the limits of authority for its bargaining representatives. Once a tentative contract is reached, the board of trustees exercises its ultimate control in its determination of whether to ratify the negotiated agreement. These functions are, of course, carried out in consultation with the president.

One of the chief misconceptions of those initiates to the collective bargaining process is a failure to perceive its broad scope. It compresses into a limited time and organizational structure the complex and ponderous college processes that heretofore have characterized the higher education employer-employee relationship. The surfeit of committee and constituency involvement in even the most mundane decisions quickly becomes anachronistic. The employer-employee relationship, which seemingly evolved with slow speed over the entire period of existence of the institution, now becomes subject to relatively meteoric reconsideration and revision.

The organizational structure that is formulated to administer the management side of negotiations should reflect the comprehensive nature of the process. It is not a task to be delegated solely to one office or one person with limited perspective and authority. It requires the marshalling, either directly or indirectly, of the resources of each of the principal functional areas of the institution. Consequently, at a minimum the organization should include representation from the areas of budget, personnel, academic affairs, physical plant, college/university relations, and policy development, or a structure by which easy access to these areas may be obtained. For multi-campus institutions or systems this may require the establishment of teams or task forces for each of the areas to integrate the disparate perspectives and data. In smaller institutions this may be accomplished simply by including representatives from each area on the negotiating team or in a resource group. The numerical size of the organizational structure is not the primary determinant. Rather, access to information and decision-making authority is.

Of critical concern to the board of trustees and the president is the composition of the negotiation team, sometimes referred to as "the table team." It is this group that will carry the greatest burden of the negotiations process. They will be required to expend a great deal of time, usually in addition to the performance of their regular duties for the institution, both in preparation for and at the bargaining table. Complementary skills, compatible personalities, and virtually indefatigable physical and mental resources are essentials. The ability to function is the overarching concern in formulating a table team, not the representation of all vested interests.

A properly constituted table team will exhibit through its membership certain necessary skills. First and foremost is its ability to communicate effectively. Second is its ability to assimilate, organize, and analyze vast amounts of diverse types of information quickly and accurately. Third, it should have some relational acquaintance with the working conditions and environment of the represented employees. Fourth, from both management's and labor's viewpoints it should be trustworthy.

One principle that is of paramount importance, and which should be inculcated throughout the organization on a top-down basis, is the representational nature of the negotiation team's functions. This requires a bipartite understanding. The board of trustees and the president must accept the fact that their interests at the bargaining table will be formulated, represented, and committed by the resource and table team members. On the other hand, the resource and table team members have the responsibility, to the extent reasonable, of emptying themselves of their own personal motivations, objectives, desires, and judgments and of representing at the bargaining table the corporate interests for the institution as directed by the board, the president, and the negotiation teams.

The selection of the person to fill the role of chief negotiator requires especial care. That person should exemplify the characteristics required of the team. From an operational standpoint, the chief negotiator must have ready access to the resource team, the president and the board of trustees.

The board of trustees has a right to expect direct accountability from the chief negotiator. At the same time, however, the board of trustees must cloak the chief negotiator with a sufficiently broad scope of authority that he or she truly can negotiate. To accomplish that end, the board of trustees and the president must relinquish control over the details of the bargaining process, particularly table strategy, including timing and packaging of proposals, trade-offs, leveraging, and other matters that can only be directed assessed by the chief negotiator and the table team. Further, the board and the president must avoid the siren songs of power and pride that would induce them to become involved in overlording or second guessing the chief negotiator and the table team and the constant attempt to "do it yourself" by engaging in side-bar conversations with union representatives or third-party intervenors.

As the policymakers, the board and the president should seize the initiative by beginning the development of their policy position parameters as early as the recognitional stage. This requires an inventory of all policy statements relating to the subjects of bargaining. The board and the president should be instrumental in forcing an identification of the acceptable and optimal limits of possible proposals for each potential subject of bargaining. The key determinant should be the obtainment of a contract that is consistent with sound educational and management principles.

During the course of negotiations, the board less frequently and the president with greater frequency should require periodic reports on the status of negotiations. If course corrections are to be made, they should be made during the course of negotiations and before tentative agreements are reached. When the negotiated agreement is brought to the board for its final approval, ratification should be viewed as a routine sequel.

THE IMPASSE STAGE

The objective of collective bargaining is, of course, to reach a mutually acceptable agreement. It is often said that if both parties are equally dissatisfied with the resulting agreement but nevertheless find it acceptable, then the true spirit of compromise has prevailed and the process has been succesful. If an agreement is not reached and impasse occurs, the parties have failed to reach agreement on their own.

Upon the occurrence of an impasse in negotiations, three possible alternative results may ensue. First, with the assistance of any one or more of a variety of dispute resolution mechanisms, such as mediation, conciliation, fact finding, or arbitration, or various combinations of these techniques, the parties ultimately may reach an agreement. Second, an agreement may be forced upon the parties by the decision of a third-party intervenor through an arbitral process. Third, the dispute resolution techniques may likewise be unsuccessful and the employees may engage in concerted activity, whether permitted by law or not, and/or management will be required to implement its last, best, and final offers.

Impasse should never be declared by management representatives without the imprimatur of the board first being secured. This may be obtained directly or by prior authorization that defines the appropriate circumstances. Generally, management should not declare impasse unless the union persists in failing to bargain in good faith.

Nevertheless, management should always be prepared for impasse and for strikes. The board and the president should see to it that a strike contingency plan is prepared and should become more directly involved if and when an impasse or strike occurs. As soon as the board and the president are informed by the chief negotiator that impasse is imminent, they should begin to consider the implications of the dispute resolution process that will ensue, based upon such factors as its impact on institutional operations and on external student and employee relations in light of the possible alternative outcomes of the process. The difficulty of the board's and president's task is to attempt to assert some control over a process that is ultimately beyond their control. The tools of any dispute resolution process are information and persuasion. It is the board's and president's responsibilities to see that the appropriate information is assimilated and persuasively presented to the third party who will be making the decision or effectively controlling the outcome.

The strike is an eventuality of any collective bargaining process whether authorized or unauthorized, lawful or unlawful. Strikes can only be weathered or overcome by careful planning. That planning should be coordinated by the board and the president. By no later than the commencement of actual negotiations, the board should have in place a strike contingency plan, which should be maintained in a highly confidential manner.

For most institutions of higher education, the objectives of a strike contingency plan may vary depending upon the group of employees involved. For strikes by non-professional employees, the prudent objective may be to plan for the continuation of operations by using employees from other areas or supervisory and managerial employees to perform the functions of the strikers. For strikes by professional groups, particularly faculty, the objective must be directed at finding some way to avoid breaching the contractual relationships with students and fulfilling accreditational requirements. In most jurisdictions, management has the right to permanently replace economic strikers, that is, those striking over contractual issues. This may or may not be a feasible alternative, depending upon the labor market area within which the institution is located. Further, the control of picketing, the avoidance of sympathy strikes, and the disruption of delivery of supplies and services should be accounted for in any strike contingency plan. It is imperative that the assistance of legal counsel with the appropriate expertise be consulted in the preparation of any such plan.

CONTRACT MANAGEMENT

The collective bargaining process does not end once a contract is reached. Management has the responsibility to put into force the negotiated agreement. That involves more than just publishing the contract and distributing it to the appropriate personnel. Sound management practice dictates that all administrative staff who will be responsible for administering the provisions of the contract be oriented to the terms and provisions of the agreement and the proper means of dispatching their duties and responsibilities thereunder.

This process should begin with the board and the president causing the terms and provisions of the negotiated agreement to be assimilated into the policy structure of the institution. Where conflicts occur, the negotiated agreement must prevail. If the board has effectively exercised its role of policy control throughout the negotiations process, the required accommodations to the new agreement should be few.

Additionally, an inventory of the affirmative actions required to be taken by management pursuant to the contract should be prepared. The president should see to it that for each such action a time schedule for its accomplishment is prepared and the responsibility for effectuating the action is delegated to an appropriate administrative office.

An educational effort should be exerted to orient all necessary administrative staff to the substance of the contract, its interpretation and their administrative responsibilities thereunder. It must be recalled that not all, and possibly very few, administrators who will be responsible for its implementation have been involved in the preparation for and negotiation of the contract. Management has the authority in the first instance to interpret the contract. Once that interpretation is made, however, it must be uniformly and consistently applied. Grievances and unfair labor practice charges are the employee's response to management's failure in these areas.

Finally, the board and the president may consider the establishment of a formal structure to oversee and to provide consultative services to assist in the contract management effort. This may include either the appointment of an individual or a committee with such a portfolio, or the establishment of a joint management-labor committee with appropriate authority to consider matters of contract interpretation and administration, or both. Whatever the structure, it is imperative that the board and the president maintain, and require their subordinates to maintain, the integrity of the negotiated agreement.

CONCLUSION

With understanding and experience, collective bargaining can reasonably be viewed by managers as simply an alternative methodology of structuring employer-employee relations. To the recalcitrant antagonist, it will be a continual stumbling block. When approached with understanding and commitment, it can become an effective tool for increasing communication and goodwill between a higher education employer and its employees.

ENDNOTES

1. The term "board of trustees" is used throughout to signify the governing body of an institution of higher education or a system regardless of the title used to denominate that body. The term "president" is used throughout to signify the chief executive officer of an institution of higher education or a system regardless of the title used to denominate that office.

Managing Collective Bargaining with Non-Faculty Personnel

By Joan Geetter

Numerous studies have focused on the effect of collective bargaining on faculty. What happens to academic senates? Does collegiality fall victim to adversarial relationships? Is the role of department chair altered beyond recognition? These and similar questions are the catechism labor relations practitioners in higher education have come to expect.

In contrast to the microscopic inspection of the college teacher in a new role as union member, relatively little attention has been paid to the faculty person as manager, a role often thrust upon him or her for the first time with the advent of bargaining among other employees in the community. Yet not only the college teacher, a relative innocent to the world of discipline and discharge, but other academic and non-academic exclusions as well, face, with a freshly printed contract in their hands, a new and often uncomfortable role.

The problems caused by this new identity, why its fit is so awkward, as well as some advice about learning to live with it is the subject of this chapter.

The difficulties caused by managing non-faculty personnel in a university, compared to managing them elsewhere, can be traced to a single communal idiosyncracy. And this is that, quite simply, in most universities the people in charge do not think of themselves as managers. From this flow most of the problems, but also perhaps the solution, to dealing with unionized employees in a university setting.

Let us look at a typical faculty member. Having perhaps never managed anything other than studies, having never led more than a class, the academic manager is often ill-equipped for directing unionized employees. Filled with notions about rights to privacy, free speech, academic freedom, and self-government, the faculty member is often no match for a determined clerical worker who, Bartleby-like, "prefers not to".

Cooks who "don't wash pots" and typists who "don't do figures" leave non-academic and academic managers alike befuddled and frustrated. Then again, the necessity to build a case by documenting deficiencies strikes your average department head as a waste of precious time, time he or she could better spend on academic tasks, and the process itself, as one put it to me the other day, is "sneaky".

The fundamental confusion about the manager's role, which is so common in higher education, is illustrated by the following story: Prior to the start of a new round of negotiations, I routinely send managers, in this instance, the fledgling director of a regional campus, a questionnaire soliciting their advice on how to improve the language of the contract. Upon receiving my request this director immediately called the union members together and asked them what changes they wanted in the contract. What he forwarded to me was a list of suggestions for increased benefits, higher wages, more time off, etc. My phone call explaining which team he was on, the red pinneys vs. the blue, had about it the air of a comic opera. It is difficult to believe that plant managers in Detroit have similar difficulty comprehending they are not the conscience of the United Auto Workers.

The confusion and insecurity attendant upon the manager's role in academe is often compounded by a state bureaucracy that bargains with classified workers from a central office, leaving the university to do the best it can with contracts that were negotiated with the Department of Transportation in mind rather than a college of arts and sciences. Would-be managers find that state calendars and staffing requirements, work-site definitions, and job classifications have been superimposed on their highly decentralized and non-hierarchical world. And while some of the rules are old ones (after all, civil service systems pre-date most bargaining contracts), they come now with a refurbished authority, backed by the clout of an elaborate grievance system and policed by that new brand of guardian angel, the shop steward.

In the face of all this, what are the contract administrators to do? What changes must they encourage in communication lines and organizational structure to ensure that academic life under the new regime goes on? Put another way, how do they transplant the organ of collective bargaining into the body of higher education without killing the patient?

The answer is that in a college or university setting, the labor relations function is also the job of transformation through education. Strong managers must be created from weak ones, and in some cases, from no managers at all. What must take place is no less than a recasting of the role the academic manager traditionally plays.

If this metamorphosis is successful, it will change the way department heads view the world and they will become comfortable exercising their managerial prerogatives on behalf of their institutions.

How Do We Help The Manager?

To bring about the change we want, what training sessions do we offer? What advice do we give?

Before we can alter the managers' perceptions of their role, we must give them a new script. In other words, we provide them with copies of the rules and regulations we expect them to enforce. All too often academic managers are called upon to work within a union contract but without policy guidelines from the institution. Wanting to say "no" to an employee, the managers find themselves handicapped by no one's having defined what is and is not acceptable. While the historical cosiness of certain work places may explain that situation, it is a luxury we can no longer afford. Staffs today are more likely to be large and litigious than small and simple. To win grievances, to have credibility with employees, we must write things down.

Practically speaking, this means that policy manuals must be developed covering everything from safety shoes to stealing. The use of every variety of leave time must be defined and explained. The manual itself is a symbol of the new dispensation. Emanating from a central place, it issues uniform guidelines. The area of discretion has been narrowed. Or, to take the union's perspective, for a moment, the arena for arbitrary and capricious action has been diminished. Working by the book comes easier to some than to others. For a few, labor relations is the stick they have been waiting for to beat their employees. For others, it is a new and bothersome intrusion into the way they do business. Whatever the perspective, employees must know what is expected of them. Rules and regulations should be forwarded to managers with instructions that they be posted. Without proof that employees know the rules, grievances based on managerial inconsistency will be sustained.

Typically the academic manager pays little attention to either the contract or the policy manual until a problem develops. Often new supervisors inherit their predecessors' failures. In those cases, they are quite likely to appear at your door with the request that you "do something". Like the physician in the accident ward, the labor relations practitioner never knows what botched home remedy is going to be wheeled in, with the request that, if at all possible it be "fixed up". To do this best, however, one needs to be consulted beforehand, which leads me to my next point.

Managers Must Learn To Consult Labor Relations Before Problems Become Acute

Once they have the policy manual in hand, the academic managers need to be instructed in the necessity to head off trouble before it starts. Not infrequently, it comes as a shock to supervisors that the evaluations they have failed to file, or the compliments they have bestowed to "encourage" the marginal performers are now going to be held against them by a union bent on breaking down their new-found determination to tell the truth. At the same time, they may feel turned off by the necessity to "keep book" on employees.

By and large, the academic enterprise values independence and permits faculty to use time as they see fit. The traditional independence of a dean may make it difficult to go by the rules or to seek help before the fact. But managers who go it alone run the risk of breaking the law without realizing it. When asked by the union's business officer to supply information related to a complaint, one dean at my school told the union he would cooperate "only if they withdrew the grievance". What he didn't realize was that his coy tit-for-tat would be viewed as an unfair labor practice.

Not only must the labor relations practitioners convince the academic managers that they can help the managers; they must demonstrate that they can do so best at the very outset of a difficulty. From the president on down, the message must become, "check with Labor Relations first".

Managers Must Learn to Pay Attention to Job Titles

If your managers are like those in most institutions, while the personnel department tries to use titles consistently, from time to time people make "arrangements" to cover a unique situation or a local problem. Not atypically, the labor relations office learns of these after the fact.

With the advent of collective bargaining, unions seek to represent employees in a particular bargaining unit. Once that representation is achieved, the titles of the jobs in that unit take on a legal significance they may not have had before. Usually they are listed in the so-called recognition clause of the contract. The important point is that while a laissez-faire attitude toward the assignment of job titles may be possible to get away with prior to a contract, legal consequences flow much more quickly and decisively from careless assignments of titles after it.

Grant fund or general fund, temporary or permanent, the meaning of these categories is quite likely to be attached to a particular title, the implications of which are spelled out in the contract. From then on unilateral, off-the-cuff alterations in any of them is tantamount to tampering with an employee's conditions of employment. Under collective bargaining, tight-fisted principal investigators may no longer change their research assistant's salary merely because the money in their grant ran out or they decided to spent it on something else. Changes in an employee's work calendar can't be made without negotiating the impact of the change with the union; alterations in "percent employed" can't be made in the middle of an appointment without invoking retrenchment guidelines.

Managers can no longer authorize employment or appointment letters whose terms have not been cleared for conformity with the contract. Ignore that advice and the institution will find itself with soft-money employees slotted into titles conveying General Fund support, temporary employees mistakenly labeled permanent. In addition, formal probationary periods need to be set up and monitored. The penalty for a mistake on this may be a long-term employee where you only had money for a temporary one, a "just cause" standard of termination where you should have needed no cause at all.

Finally, managers must be cautioned against making promises to employees during interviews and job offers. Assurances to the effect of "don't worry, we'll see that you get out of the bargaining unit", or "it's okay, I'll see that you're marked 'confidential' to avoid paying dues" can't be acted upon and may be illegal. The suggestion that because your school has rental housing it might be a good idea for the new employee to live on campus may become converted into a condition of employment you'll be required to continue.

Managers Need to Find Out What Benefits They May Be Giving Already Without Knowing It

For some employees, one of the windfalls of a bargaining relationship is that it legalizes their standard of living. Through the magic of a past practice clause, common law benefits can be converted into honest perks.

Not inconsistently, vice presidents have been known to feel faint upon discovering employment practices their institutions have permitted, sometimes for years, without their realizing it. And it is often the labor relations practitioner who has to break the news that management unwittingly gave away the institution's patrimony.

With a generous past practice clause, routine coffee breaks, parking privileges, and personal time off that have never been officially acknowledged must be continued. Sometimes without knowing it, the institution has pledged itself to maintain employees in the style to which they, if not management, have become accustomed.

It is as if after signing a collective bargaining agreement governing your house rules, you discovered that your teenage son had been borrowing your car every night without your approval. Under collective bargaining, unless your contract anticipated and specifically dissociated your household from that possibility, you may have taken on the responsibility to continue to subsidize his indiscretion.

Managers Need to Learn How to Evaluate Employees

In addition to other formalities, contracts may bring with them salary increases based on standards like "merit" or "satisfactory performance". Faced with distinctions of this sort, the manager who wishes to withhold a salary increase or not award a merit bonus must be schooled in the art of evaluation. Yet this is the most awkward task for many managers to perform. It is especially difficult where a kind of social promotion has encouraged the retention of incompetent or unsatisfactory employees whom fellow employees work around rather than with.

Managers must learn that they cannot check every box on a rating form under the heading "excellent" and then deny a salary increase. Managers must learn to be specific in their expectations for improvement. Amateur therapy ("Mr. X is neurotic or acting out") must give way to specific examples of desired behavior. Academic managers especially must cease coating their managerial medicine with rhetorical confections designed to make them diverting and palatable. So successful have these disguises been that I have known employees to emerge from conferences designed to review their shortcomings convinced that they were about to be promoted. In short, the blunt should take precedence over the beautiful if the latter runs the danger of being misunderstood.

Just as some professional employees seem to believe that being professional grants them an exemption from accountability, some managers have difficulty evaluating professional employees. One evaluation instrument I saw began with the statement:

> "...it is well established that you know your job. The matter that seems most relevant is your growth as a professional. The purpose of the evaluation instrument then is to help you measure your growth during the past year and determine what you are doing to prepare for the future of the office."

Clearly what we have here is a case of mistaken identity. The fact that a professional job involves the exercise of judgment and discretion does not mean that every professional employee is a free agent answerable only to his or her own sense of what is desirable; nor is professionalism a synonym for being fine to start with.

Managers as well as employees at colleges and universities must rid themselves of the notion that, like the faculty, employees in support positions have academic freedom. This problem is particularly acute with nursing and social service staff, who, because they may justifiably make use of professional judgment, believe they can set the goals and staffing requirements of a department. The director of our nursery school assured the dean that we couldn't change her responsibilities because that would violate her academic freedom. Because of its implications for their flexibility in the future, under collective bargaining managers must be particularly careful not to confuse an employee's expertise in an area with the right to set the direction of the enterprise.

Managers Need to Practice Defensive Management

It is also undeniable that collective bargaining brings with it what I call defensive management. This is because the availability of grievance and arbitration machinery makes it likely that many personnel actions, from a simple warning or putting a letter in a file, to the most severe, such as massive layoffs, will all be grieved and so ultimately reviewed by a third party outside the university.

Under these circumstances, the perspective of the managers is necessarily lengthened; they become chess players, necessarily thoughtful if not wary of the next move. Even one's opening gambit must be scrutinized for its implications as to the flexibility of the grant design. "If I go for a five day suspension, will the arbitrator cut it down to two?, so if I really want five, need I request eight?" "If I can call this incompetence, do I prevent myself from calling it misconduct later?" Under a union contract, employees become plea bargainers, while managers, who are now prosecuting attorneys, often compromise disciplinary measures that they know are deserved but technically flawed.

It is also true that under collective bargaining few actions are quickly over and done with. Grievances, even minor ones, may drag on for months and sometimes years. And because consistency of approach on an issue is important, (the institution can't claim one transgression at the first step and another at the second), it is imperative that the last step have been anticipated before the first one is set in motion. Managers should be trained to answer their grievances as though they were all going to arbitration. With good luck many will not, but defensive managers need to be prepared for that eventuality at the outset.

Managers Need to Learn How to Discipline Employees

It is safe to say that only under collective bargaining is the idea of disciplining employees fully exploited. My impression is that without a contract, when it is handled at all, misconduct is dealt with obliquely, by subtle pressures applied to and around the employee designed to convey the institutional message.

In some schools, professional and technical employees are more likely to be quarantined than fired. Except for the tenure track, the prevailing non-faculty employment pattern is not up or out, so much as up and over.

For better or worse, bargaining puts a crimp in such evasive maneuvers. Since job transfers and reassignments in non-professional areas are usually rigidly governed by seniority, the movement of an employee as a result of a conflict is difficult to conceal. Even changing a professional employee's supervisor or location will often be good for a grievance or unfair labor practice charge. The net result of all this is that to be effective, discipline must be dealt with up front, faced for what it is rather than camouflaged as something else. The old ways die hard, however, and managers may still have to be dissuaded from rearranging an entire department merely to get rid of a particular employee.

Discussions with employees about their shortcomings or misconduct should be exercises in the art of the literal. All stages must be carefully labeled. If a romance were conducted the way a disciplinary session is supposed to be, it would sound like this:

> Before meeting: "Dear Mr. X, I invite you to a meeting at 5:00 for a kiss".
>
> During the meeting, reiterate: "I am kissing you".
>
> After the meeting, write a memo stating: "At our last meeting at 5:00, I kissed you."

It is only by describing the purpose of the invitation, annotating progress as the event takes place, and memorializing it afterward that managers can be protected from the changes of perception that will inevitably occur prior to or during grievances concerning their disciplinary actions.

Under Collective Bargaining, Managers May Be Tempted to Let Employees Make Fundamental Managerial Decisions

When negotiating or living under a contract with employees who have a high degree of professional identity, like teachers or nurses or police, the manager often finds that the employees are only too willing to take on the basic task of deciding the direction of the enterprise. This tendency is even more pronounced in an academic environment.

In a recent grievance involving nurses at our Health Center, their complaint came prefaced with a flyer stating that the union disagreed with management's definition of an emergency. Under our contract, ATC nurses can only float to the Psych. unit except in "an emergency". In the union's view the term "emergency" may not refer, even briefly, to a situation brought on by an absence of personnel but must refer exclusively to "disasters" that bring in large numbers of critically ill patients.

It is easy to see that the union's real goal in this grievance is to determine the staffing needs of our hospital. They wish to do so because, in their words "there has been a substantial decrease in the number of RN's and aids for the ATC unit and ....administration has no plans to change this even with the steady census in the unit...."

What is a unique and (in a period of scarcity, dangerous) temptation in dealing with the unionized professional on campus is to accede to union demands as a way of achieving legitimate goals that shortages of money might otherwise prevent. Management sometimes reasons that if it can get the contract to mandate library acquisitions or generous staffing patterns, legislatures or Boards will have to support professionally desirable goals in spite of themselves. Needless to say, support personnel at the bargaining table are very persuasive about the needs for adequate equipment, special training programs, etc. And why shouldn't they be? They are voicing the highest ideals of their professions.

The danger is that in exchange for including non-mandatory items in the contract, items which, though desirable, the law does not require a school to negotiate, management has ceded its control over the destiny of the institution. Contractually mandating the number of text books that must be bought for the nursing staff may solve the problem this year. But what it may also do, which is less desirable, is to prevent the medical center from unilaterally deciding at some future time that it prefers to merge its facilities with another institution, and no longer wants to have a nursing library of its own at all.

The point to be made is that it is a mistake, in the pursuit of short term goals, to include in contracts items you are not required to negotiate. What you mandate in haste you may have to live with in leisure.

SUMMARY

What I've tried to do in this chapter is highlight those changes in the managers' environments, outlooks, and modes of operating that should come about as the result of the presence of unionized support personnel on their college campuses. The lessons to be learned are not new, (good personnel practices preceded collective bargaining,) but they are certainly more consequential. Under a union, the employee cap pistol had been replaced by a gun with real bullets, the ammunition of the bargaining relationship. Notwithstanding this, the fundamental lesson for the manager is a simple one: act on behalf of your institution, and, if you are a public school, of the state. In that capacity, you have responsibilities to oversee. Among these are that employees must be told what is expected of them and evaluated against these standards, that employees do not have the freedom to choose whether or not to do those tasks within their job classifications, and that employees can be disciplined for just cause. While the list could be a long one, the fundamental principle is simple. Under collective bargaining, the managers have the responsibility to ensure that the institution's work is being done; more simple yet, they have the obligation to be in charge.

The Impact of Collective Bargaining on Physical Plant Management

By Jack Hug

INTRODUCTION

Much has been written about collective bargaining and its overall impact on higher education. Almost all the literature deals with faculty unions, however, and there is limited publication of information on the effects of collective bargaining on physical plant management for colleges and universities. Collective bargaining in physical plants is not new to a large number of our colleges and universities. There are many excellent physical plant administrators who have become good labor relations practitioners and who manage their departments effectively.

In fact, labor relations in the physical plant department is an integral part of all work-related activities. Collective bargaining will have an impact on many critical areas of physical plant responsibility. The task of effectively integrating good employee relations into the daily work of the organization is a vital one and must be pursued with diligence and perseverence.

The Association of Physical Plant Administrators has identified in its "Comparative Costs and Staffing Report" a listing of colleges and universities that have unions in the physical plant. In the 1981 edition, with 353 institutions reporting, 131 colleges and universities reported having unions in the physical plant. The listings by region indicate the greatest number of unions occur in the eastern and midwestern sections of the United States. The Pacific Coast is a distant third, but well ahead of the southeastern states.

The realities of managing at any one particular institution may be quite different from another. A specific campus with its own specific people will have its differences, therefore, and the realities of this must be kept in mind when reading this material.

Managing the physical plant work place today requires more expertise than ever before. The physical plant administrator needs to know not only how to integrate physical plant services with new technologies and changing demands of the university, but, most importantly, how to deal with the demands of a sophisticated work force frequently in a collective bargaining environment. For those managers who have yet to experience collective bargaining, there are many lessons that can be learned and examples that can be obtained from those who have. Many important lessons can be learned from our own mistakes. It has been said that it is even better if we learn from the mistakes of others. Exchange of experiences is valuable on many subjects, and exchange of experiences on collective bargaining is an exceptionally good subject that fits this example. Physical plant administrators are encouraged to seek out and obtain the benefit of this experience. Assistance through membership in professional associations such as the Association of Physical Plant Administrators and the College and University Personnel Association are strongly recommended.

Although this chapter is primarily intended for those who are new to physical plant labor relations, it will also serve as a refresher to the veteran manager and will serve to reinforce the fact that, as union contracts come into existence, mature, and are re-negotiated, input and active involvement on the part of the Director of Physical Plant is essential.

THE DIRECTOR'S RESPONSIBILITY

The director of the physical plant must accept the fact that managing in a collective bargaining environment is different than managing in an organization that does not have a union. New department managers in union organizations and managers who are administering union contracts for the first time will do well to recognize that new and additional knowledge and skills are required. No matter how good one's employee relations skills are and no matter how much of a student of management one may be, administering collective bargaining contracts in most cases is different.

The director of physical plant must recognize the need for help from the campus personnel and employee relations staff. On a regular basis the director must communicate, must strengthen department relations, and must support the campus personnel and employee relations staff on employee relations issues. In return, the director can insist on and should expect timely and professional support from the personnel and employee relations staff. It is generally believed that the "management team" of the physical plant department consists of the director and the respective subordinate managers and supervisors. Certainly, this group represents a most important part of the management team. In managing with the union, however, the director must recognize that certain administrators outside of the physical plant department must be included as a part of the "employee relations management team."

A knowledge of and commitment to good personnel practices must be shared by the directors of the physical plant, personnel, and employee relations. The unquestionable support of the campus administrator(s) to whom the directors of physical plant, personnel, and employee relations report is also necessary.

In recognizing the responsibility for employee relations, directors must know their needs and the needs of the physical plant staff of managers and supervisors. The needs of the directors and the management staff of the physical plant department will, in many instances, be such that a complete assessment of strengths and weaknesses is required. Physical plant directors must take the initiative to secure the necessary information, education, and training for themselves and for their staff of managers and supervisors. Directors of physical plant must recognize and emphasize to their staffs that their objectives through the collective bargaining process are pro-management, as opposed to anti-union, and they must explain exactly what this means.

Just as the professor in the classroom needs a philosophy of education, so does the director of physical plant need a philosophy of managing with the union. This philosophy or attitude of management must be in concert with the university administration. This philosophy must be understood and it must be communicated throughout the organization. This is particularly true for "first time" contracts. Directors will be answering questions and responding to many inquiries pertaining to how management feels, interprets, and intends, to apply specific sections of the contract.

The need for a clear understanding of management's attitude towards managing with the union begins and ends with the campus administration. The importance of this to the success of good employee relations cannot be overemphasized. This is true, of course, even without collective bargaining. With collective bargaining the visibility of certain key administrators will be increased as they will be identified as the appropriate administrator to deal with certain contract matters. Under collective bargaining, some changes in these key administrators may be observed. Tough stances and unwavering positions on certain issues may no longer be acceptable. The key administrators orchestrating and directing campus employee relations must be in concert or the results will be sour notes and poor reviews from all affected.

The procedures to be followed in managing in a collective bargaining environment will vary depending on the institution's characteristics; that is, whether the institution is public or private, is independent or is part of a multi-campus college and university system. Regardless of what this structure is, the degree of involvement required of the physical plant director is the same in all cases. The director of physical plant must play a major role by becoming involved in all preparations for collective bargaining. Active participation during the time in which the bargaining unit determinations are made is essential, especially in identification of managerial, supervisory, and nonsupervisory personnel. Active participation in the preparation of access rules for union representatives to the campus and the work place is a must. The director must be knowledgeable of unfair labor practices and must know what actions to take during union organizing activities.

Information, input, feedback, and detailed discussions (particularly during negotiations) are extremely important. During contract negotiations directors must rely on information from others and will find that many of the little details to which they had not paid much attention will, all of a sudden, become extremely important. They will recognize that there must be a conscious effort to become more aware and more alert to many things taking place throughout the department. There will be a need to practice consciousness raising by all managers and supervisors. The consistent and uniform applications of department procedures, work rules and practices that have been in place for years will become active topics of discussion. A line will be drawn between union and management, and, if the director is not careful, an adversarial relationship may be established that will be hard to turn around and will make managing with the union much more difficult.

IMPACT ON THE MANAGEMENT TEAM

Once the union has been formally recognized, authority on a departmental level may appear to the director of physical plant to become more restrictive. In fact, what takes place is that a more careful approach is made at clearly defining authority, and what may appear initially as restrictive results in a good management practice of identifying who does what.

When a union is present there is a significant increase in the requirement of the director to seek the counsel and advice of labor or legal personnel prior to making a decision. The campus employee relations designee or the department of personnel services will be thought of as the central point and clearing house for all matters concerning employee relations. If this is not apparent in the early stages, it will evolve as a matter of necessity and eventually will be recognized by the principal managers in both the physical plant department and the department of personnel and employee relations.

The implementation and application of the contract becomes more exacting each time a contract is negotiated or each time a union representative confronts a manager about scheduling overtime, assigning work, or when disciplinary action is required. The union representative's role is to challenge your decisions and actions whenever he or she thinks you are in violation of the contract. This can result in separating managers and supervisors from the employees they work with. Thus, the union representative competes with you in many respects for the loyalty of your employees.

A hard fact for most managers to accept is that until unionization came along they have probably been able to demonstrate that they do not need the aid of a union to help them do their job of properly managing the department. Furthermore, many physical plant directors believe that any unecessary centralizing of the decision-making process is detrimental to effective physical plant management.

The impact of collective bargaining on the director's effectiveness can be quite dramatic. Some of these effects are as follows:

1. The director may no longer be comfortable dealing with employees individually on items relative to the terms and conditions of employment.
2. The director of physical plant must discuss with the union the impact of many decisions relative to the working conditions of the employee.
3. The director of physical plant must find acceptable methods of communicating and working with each segment of the department structure that may be represented by different unions. Additional work is necessary to keep these segments informed before, during, and after decisions are made. This is particularly important in managing departments with multi-union contracts.
4. Directors, managers, and supervisors within the department may lose prestige and authority, depending on their role in negotiating and handling contract matters. There is a real danger of losing a sense of ownership of the labor relation problems.
5. Managers must live technically by the provisions of the contract. This means that they must keep accurate records and pay closer attention to managerial activities.
6. The director of physical plant must be aware of the potential danger of centralization of some of the decision-making processes relating to employee relation issues. Department managers may tend to become uninterested in hearing individual complaints and in trying to resolve them informally. It is easy to assume the position and to tell employees "don't bother me - take it to grievance."

IMPACT ON DEPARTMENT ORGANIZATION

Physical plant departments are generally organized to provide logical fulfillment of the department's objectives and, ultimately, the goals of the institution. In this respect a physical plant department is no different than many other campus departments. The organization of the department is influenced by many factors and the right combination of organizational structure and people is still the key to successful organizations.

The department organization that existed before collective bargaining may no longer work with a union on campus. Certain job classifications that once may have been thought of as supervisory may all of a sudden be part of the rank and file. The span of control of the front line supervisor may change dramatically. In some cases it may be necessary to create new non-bargaining unit supervisory positions. The designation of who is managerial and who is supervisory will have an important effect on the department organization.

COMPOSITION AND SCOPE OF THE BARGAINING UNIT

Further impact of collective bargaining on the department organization will be determined by the composition and by the scope of the bargaining units. For example, the scope of the unit may be the entire physical plant department, and its composition may be all employees up to, but not including, first-line supervisors. The scope may include only the grounds and custodial personnel. The building trades personnel may be carved out as a separate unit with a different union representing this group of employees or with each specific trade, such as carpenters, electricians, plumbers, and painters each represented by different unions. The composition of the unit will be influenced by the degree of inclusion of lead-workers and supervisors. Some colleges and universities even have separate unions for supervisory personnel.

Bargaining units vary greatly in size and complexity, and there appears to be a wide latitude in unit determination. The director of physical plant must be alert to the effect of this on the organization. Should collective bargaining be new to the institution and the bargaining units not determined, then the director of physical plant has a unique opportunity and an important responsibility to influence both the composition and the scope of the bargaining unit.

The boundaries of the bargaining unit can create constraints on such things as job assignments, transfers and promotions, the management team composition, and uniform application of certain policies and procedures. The bargaining unit composition, scope, and number of unions representing various employee groups must be considered carefully in reviewing the department organizational structure. In the event of adverse labor actions, such as a strike, the bargaining unit in all probability will become the strike unit, even though strikes are rare in higher education. The ability to withstand a strike is an important factor the director must consider.

POTENTIAL FOR DIVIDED LOYALTIES

In this author's opinion, a major obstacle to effective goal-oriented and cost-conscious supervision of union personnel in the college and university can be the inclusion of the foremen and supervisors as members in the same bargaining group as the personnel whom they supervise.[1]

Union membership generally means that supervisors feel their first loyalty is to the union. Their management roles can become quite limited and they may avoid handling many normal supervisory functions (or management may avoid delegating). The effective establishment of staffing schedules, performance measurement, and dealing with grievances and disciplines is at best difficult, if not impossible, for supervisors who are in the same bargaining unit as the personnel whom they supervise.

If certain supervisory classes are included as part of the bargaining unit, the director of physical plant has an especially delicate situation to deal with. The director of physical plant must be assured of a cadre of frontline supervisors whose loyalty will not be compromised by concurrent obligations to the interests of the union. The potential for this conflict of interest lies in the authority to control or influence personnel decisions on matters falling within the scope of representation, such as wages, hours, and working conditions. The management team must include the frontline supervisors, and must recognize that indeed it is the supervisor who provides the "key link" in the chain of management and labor.

IMPACT ON MANAGERIAL STYLE

Another item that will affect the department organization is the managerial style of the management team. Over the past several decades, a great deal of attention has been given to management style in business literature. While the subject of management style is beyond the scope of this chapter, it is important to recognize that the management style within the physical plant department must be assessed if effective management is to occur in a collective bargaining environment.

Managers who, prior to collective bargaining, consulted regularly with employees in a democratic fashion will have fewer adjustments to make than managers who administered in a relatively authoritarian management style. Even the most democratic administrator, however, will have to become more careful in developing and maintaining records, in meeting deadlines, and in collecting and disseminating information. The physical plant director will become more dedicated to professional purposes: setting and clarifying standards, disciplining employees, performing objective employee performance evaluations, and making recommendations in support of the department's needs and goals.

Management style is a serious matter and is an integral part of an effective employee relations program. Responsible performance on the part of the physical plant department managers and supervisors is the foundation for sound employee relationships. The destination toward which the practice and programs of the department is directed must be clear. General agreement on this destination can usually be obtained; however, disagreement can develop when the choice of how we are going to get there is made.

IMPACT OF RESTRICTIVE CONTRACT PROVISIONS

Base wage and fringe benefits are often thought of as occupying the main attention of the parties to collective bargaining agreements. For some reason the bargaining parties, and the general public as well, have focused attention on these costs, generally neglecting many less obvious costs that result from other provisions of the labor agreement. An improved understanding and awareness of specific contract provisions that are restrictive and costly is essential for all concerned. It is important to identify the effects of contract provisions on the ability of the physical plant department to carry out its responsibilities in an efficient manner.

Some observations deserve special emphasis:

- There are restrictive provisions in all union agreements and these provisions are costly to the university.
- The effects of these provisions on the cost of physical plant department operations can be estimated and should be known at the time of contract negotiations, but they rarely are.
- University administrators generally are not sensitized to the continuing cost impact of restrictive provisions.
- The potential exists to remove or to modify many of these constraints if the director has the facts and the input to the contract negotiating process.

The physical plant director and the entire management team must recognize that, even before the union existed, there were probably inefficient work practices in existence. These practices range from non-productive work time, output limitations (standards), favoritism from supervisors, and excessive staffing requirements. Such practices are often tolerated to appease employees, to help recruit scarce employees, and to avoid confrontation. Campus labor practices such as these are inefficient and are costly work practices.

Contract terms and conditions found in typical agreements increase hourly costs to the university over and above wages and fringe benefits. Contract items and poor management practices that the director of physical plant must be watchful for are as follows:

1. nonproductive work time - late starts, early quits, excessive time for wash-up and putting away tools, unauthorized breaks.

2. additional time payments - guaranteed overtime for specialty craftsmen, overtime for total craft if anyone works overtime, 40-hour guarantee for bargaining unit foreman or steward.

3. premiums, travel pay, special jobs incentives - apprentice payments for work above classification; premium pay for height, materials, equipment; overtime lunches and eating on university time for work after the regular scheduled times; travel pay for callbacks.

4. work restrictions - restrictions on repairs by specialty firms and contract work; unnecessary limitation of work within crafts, such as maximum number of units per day or similar productivity restrictions; limitation on type of work by apprentices.

5. jurisdictional disputes - composite crews with more workers than necessary, decisions of which craft performs a given task.

6. steward - non-working stewards, remaining for overtime work when not essential, involvement in hiring and termination, payment over scale or other favors, last one in lay-off.

The director of physical plant can develop a procedure to determine the cost of labor contract clauses and can determine the impact of this on the department's ability to meet its obligations. Reference is directed to a helpful publication "Comprehensive Contract Costing" published by the National Construction Employers Council (NCEC).

THE IMPACT OF SPECIAL INTERESTS

GRIEVANCES

The problems that a physical plant department encounters in the day-to-day business of living under a union contract are influenced by many factors. No two contracts are exactly alike, and small differences in language may make all the difference in the outcome of a dispute. Labor agreements are not easily applied and interpreted. Typical agreements include coverage of a multitude of terms and conditions of employment. Questions and differences of opinion arise frequently as to how a basic agreement provision is to be applied to a specific situation.

I have learned through contract negotiations that some provisions of the contract may be purposely stated in generalized language, leaving a considerable amount of latitude for application. In order to provide a collective bargaining forum for resolution of these day-to-day operating problems, the grievance procedure is introduced. Grievance procedures vary greatly in form and content, but there is a common element in virtually every grievance procedure that affects the physical plant administration. This common element is a systematic procedure established whereby the employee with union representation attempts to resolve a problem with management. Grievance resolution at the lowest possible level in the organization is most generally preferred. No matter what the exact process is, physical plant managers and supervisors must be skilled at handling grievances.

Most collective bargaining agreements outline procedures whereby the union or the employee may adjust grievances. The definition of a grievance is determined through negotiations. The non-bargaining unit administrator who must respond at the various steps and the time in which to respond will affect the management of the physical plant department in various ways.

DISCIPLINE

Nothing is as important as the maintenance of good morale and the contribution that it makes to a favorable working environment. For every employee who appreciates getting away with something, there are many more who would rather see the offenders get caught and fairly dealt with. When one employee breaks a rule and is not penalized for it, other employees feel a sense of inequity. If employees perceive rule-breaking as a positive benefit, and especially if they believe that conforming to the rules is a cost that is not offset by an additional reward, a perception of the relative benefits of work will be altered.

Many physical plant departments have farily strict discipline during the work hours. This does not mean that there is no room for compassion or flexibility in the exercise of job rules. This does not have to change with collective bargaining. Disciplinary standards and procedures should be at least as fair and predictable as they can be. Beyond this, the guiding principle for discipline should be the same with or without collective bargaining. Reasonableness and consistency should prevail.

EMPLOYEE COMMUNICATIONS

To a great extent, management is communication, and employee relations management is communicating with employees. What an employee thinks or perceives is often more important than the facts. For example, if the physical plant department has fair and necessary work rules but they are perceived as otherwise; then there is a problem. The access to and the interpretation of information by employees is important. Superficial attempts in treating communication with employees simply will not work. The director of physical plant must be able to establish that the employees have received the communication and that they have accepted it as accurate.

Employee communications start with recruitment and never end. It is especially important for the university, and particularly for the physical plant director, to establish the university's position in regard to collective bargaining and to make this known to the employees, the supervisors, and prospective employees. This should be done formally and in such a way as to leave no doubt.

Another important function of employee communications is to dispel rumors. There are few things as threatening to an otherwise effective labor relations program than rumors of bad things to come and unwelcome events that might affect employees.

Given the complexity of operating a physical plant department, the establishment of written personnel policies, rules, and procedures specific to the physical plant department is highly recommended. These should cover areas not included in the university-wide policies or established through labor contracts. These would include such items as: work rules, call-in procedures, work equipment and tool assignment and issue, specific job duties/responsibilities, and employee orientation procedures.

In communicating with employees, the physical plant managers must be technically proficient and familiar with the "rules of the game." The effective labor relations physical plant manager will be objective and highly principled, just as effective managers must be in other functional areas of the department. In fact, given the nature of the activity of labor relations, it is even more important that a sense of ethics and a sense of honor be maintained. This will not detract from the effectiveness of the manager involved. It will add to it.

The communication of policies is a major consideration. Policies will not be consistently applied without adequate communication. Management must demonstrate at all times that the right hand knows what the left hand is doing. Managers and supervisors, particularly, must work at improving communication throughout the department. Communication must be viewed as a personal situation and not as a mechanical process. "Personal contact is supreme", and an ounce of meaningful participation can be worth a ton of directives and memos. The demands on the managers' time and the size of many physical plant departments often precludes this personal contact. The director of physical plant must acknowledge the impossibility of being everywhere at once. In managing with the union, all managers and supervisors must increase their level of consciousness of what is going on in the department. In many cases this will require that they become students of their organizational environment and that they constantly be aware of the changes taking place in their organization. They must know their organization and they must know its operation thoroughly.

LABOR-MANAGEMENT COMMITTEES

Many collective bargaining contracts contain clauses that require the establishment of joint union-management committees. Some of the more common committees are: safety committee, apprenticeship committee, cost savings committee, and productivity improvement committees.

Many university administrators and union leaders have an opinion that these types of committees, if managed properly, do in fact, improve productivity, improve morale, provide for a safer working environment, and overall, enhance mutual understanding of many broad problems.

The impact of the union-management committees on the physical plant department operations can vary greatly from institution to institution. An important point, which the director of physical plant must keep in mind, is that in most instances these joint committees, even though created through collective bargaining agreements, do not deal with negotiable issues of wages, fringe benefits, working conditions, or grievances, but are limited to issues of mutual interest not usually covered by written agreement.

The experience of others can be valuable when incorporating these various committees into the department. Whilte it is acknowledged that there is no best way to manage this successfully, discussions with others have shown that the impact of these committees will be determined by the degree to which both parties want the union-management committees to work. In addition, there must be realistic expectations as to what can be accomplished. Union committee members must have credibility with the rank and file, and management members must have appropriate status and authority. The committee must not discuss matters established by the collective bargaining agreement that would infringe on the rights of either party. There must be a mature and open relationship. To effectively utilize the talents of both parties, both must agree to concentrate on finding solutions to problems as described within the committee charter. For union-management committees to succeed over any substantial period of time, recommendations must be weighed objectively and acted upon.

TIME CONSTRAINTS

One of the interesting things that can be identified in reading a typical union agreement is that there are numerous contract articles that reference time. The time constraints leveled by specific articles will affect the physical plant management in many ways. The following are some examples of contract clauses that impose time constraints, demand new understanding, and induce a degree of pressure and stress for managers:

1. The duration and implementation of the contract - when does it begin, for how many years, and are there reopener provisions?

2. Definitions of calendar year, day, fiscal year, work day, work time, cleanup time, callback time, overtime, comp time, designated time, reasonable time, timely manner, and release time - the manner in which these terms are used throughout the various contract clauses must be recognized and understood.

3. Grievance procedure - time constraints both for the employee and management are spelled out for each step. Grievance procedure time limits for filing at various levels, including what is counted as the filing date, whether or not the event giving rise to the grievance occurred within a prescribed period of time is allowable, response time and time off for preparing grievances and attending grievance hearings are contained in the grievance procedure, as well as what happens if either party fails to meet the designated time limits.

4. Appointment, assignment, and reassignment clauses generally contain language relating to time for posting job vacancies, number of days before higher pay is required, and special provisions for reappointment within a certain time period.

5. Probationary periods and evaluations are very important time-related articles.

6. Personnel file clauses may contain time requirements to respond or to place materials in a timely manner. Time limits on retaining documents such as disciplinary action may also be included.

7. Other articles - leave of absence, vacations, time off to vote, funeral leave, sick leave, jury duty, military leave, seniority, and lay-off generally contain important language on time limits.

In summary, because of union contract provisions, the physical plant director will be more conscious of pressures caused by the impact of time constraints in managing the department.

HARD FACTS

There are many hard facts that managers will recognize in managing with the union. The term "hard facts" is appropriately used because, by definition, the term "hard" means not easily penetrated, not easily yielding to pressure, firm and definite (as in agreement), realistic, and difficult to bear and endure.

Managers in the physical plant, to successfully manage the "hard facts" of collective bargaining, must accept "hard work," take a "hard look" at department operations, stay free from sentimentality and illusion, and use good "hard sense." The employee relations team will try to drive a "hard bargain" during negotiations with a minimum of troublesome and "hard words" that are difficult to comprehend or explain.

"Hard" implies the presence of obstacles to be surmounted or puzzles to be solved. "Hard" means demanding great exertion or effort. To deal effectively with the many "hard facts" of collective bargaining, managers will need to use skill, patience, and courage, stressing the need of laborious and persevering exertion. Simply stated, effective labor relations is "hard work."

Managers must be careful not to be confused by the numerous different signals received throughout the collective bargaining process. Managing with the union in the physical plant does not necessarily mean managing "hard and fast," in a "hard handed" manner, or being "hard headed" or "hard-boiled." Effective managers will find, however, that there are times when they must be a "hard sell" and they may be "hard put" to agree to change and to accept some of the formalities that characterize union management relations.

The "hard facts" of the impact of collective bargaining on the physical plant are as follows:

1. Unionization can make some managers less effective, while others may become better administrators.
2. Unionization will require more centralization of decision-making.
3. Authority at the department level will become more restrictive.
4. The director's and department managers' management styles will be questioned and challenged more than before collective bargaining.
5. The campus office of personnel and employee relations will be thought of as a clearinghouse for all matters pertaining to employee relations.
6. The union will get credit for some of the good things that management has been working to develop or to change.
7. Managers must know the department organization well and must be ever alert and conscious of many details previously gone unnoticed.
8. There will be a need for new management skills, especially for understanding and communication.
9. Regardless of what is said, the union will appear to be telling managers how to manage. Effective managers will demonstrate that they do not need the union to help them properly manage the department.
10. If the employee relations management team is not careful, there will be a gradual, but relentless, attrition of management's rights.
11. The employee strike, even though rare in higher education, can happen.
12. Senior campus administrators, who have traditionally viewed management of the physical plant at a distance, must become more interested and more involved.

CONCLUSION

This chapter began by noting that managing the physical plant today requires more expertise than ever before. The director of physical plant faces a litany of problems in managing the daily activities of the department and employee relations is always near the top of the list. The challenge of incorporating new technologies while preserving basic physical plant services, meeting the changing demands of the university, and responding to a sophisticated work force requires a competent and professional physical plant manager.

Maintaining a campus environment that is conducive to learning and that allows the physical plant department to carry out its role in support of the university's overall mission is a complicated process. To do this effectively requires good employee relations. The application of good employee relations principles and practices by the entire management team, including the office of personnel and employee relations, the director of physical plant, and other appropriate administrators, will minimize the negative effects of collective bargaining on the management of the physical plant department.

ENDNOTES

1. It is recognized here that the term "supervisor" is generally thought of as a management position outside of the bargaining unit. At some universities and colleges, however, what once was thought of as supervisory before collective bargaining may well become part of the same bargaining unit. (Public Employee Relations Board decision, The California State University, December 1980, Re: nonprofessional operations employees).

Collective Bargaining in University Teaching Hospitals

By William J. Neff

This chapter discusses some of the major differences between the collective bargaining environment found on a university campus and that found in a university teaching hospital. There are, of course, many similarities between the two but there are most likely more similarities existing between university teaching hospitals and community hospitals than between university hospitals and their campuses.

BARGAINING OBLIGATIONS

In most areas of the country, collective bargaining has been a relatively new experience for higher education, with few bargaining relationships existing in public higher education before the mid-1960's and in private higher education before 1970.[1] At the same time, few public hospitals were involved with collective bargaining before the mid-1960's and most private not-for-profit hospitals did not find themselves with collective bargaining responsibilities until after the National Labor Relations Act was amended in 1974. As such, while experience with the collective bargaining process in the higher education and health care industries is considerably less than that found in many other industries, it is becoming apparent that significant differences do exist in many areas.

BARGAINING UNIT DIFFERENCES

One of the first collective bargaining issues faced by a university with a teaching hospital is that of bargaining unit formation. In order to deal with such issues, it is necessary that university administration understand that the National Labor Relations Board (NLRB), in a series of decisions in 1975, outlined seven separate groups of health care employees considered to be appropriate bargaining units. These are physicians, registered nurses, other professional employees, technical employees, business office and clerical employees, service and maintenance employees, and security employees. In some cases, the Board has also approved a maintenance department unit and a unit of stationary engineers or boiler operators separate from a service unit. Most state labor boards have followed the NLRB bargaining unit standards when dealing with the uniting issues in public health care facilities.

At the same time, university administrators must know that the NLRB has not adopted specific unit standards when making higher education uniting decisions but has continued to rely upon the general "community of interest" unit criteria applicable to manufacturing and service industries.[2] This has been especially true when the Board has dealt with the uniting of non-professional campus employees. When professional employee unit issues have been addressed, it has most often occurred with faculty uniting, and most of these Board decisions pre-date the Supreme Court's 1980 *NLRB v. Yeshiva University* decision. Prior to that decision, the Board had ruled that most faculty members were covered by the National Labor Relations Act and consequently were eligible for uniting. Uniting issues thus revolved around the appropriateness of certain professionals being in or out of the faculty bargaining unit. The Board, relying upon the facts of each case, including the definition of the unit sought by the union, has found, for example, medical school faculty (M.D.'s and Ph.D.'s alike) to be appropriately included or excluded from faculty bargaining units.

Having briefly reviewed the Board's treatment of the uniting issues in higher education and hospitals separately, the question arises as to what university teaching hospital units might look like in light of different uniting criteria of the Board.

PROFESSIONAL EMPLOYEES

Physicians

Most physicians in university teaching hospitals hold faculty appointments; thus, uniting issues would generally be addressed through the faculty unit question. For those employee physicians who do not hold faculty appointments, a separate unit of these individuals is quite possible, if not probable, under present Labor Board criteria.

Registered Nurses

Most university teaching hospitals are large, complex organizations employing hundreds of nurses. With such numbers, it is quite likely, under present Board criteria, that registered nurses would be granted a separate bargaining unit from other hospital and campus professionals. This unit, consistent with Board criteria, could include registered nurses working as nurses in campus student health centers, dental school clinics, schools of public health, etc.

Other Professionals

Board precedent for uniting other professional employees is far less settled when addressing the issue of both hospital and campus employees. Consequently, university administrators must deal with such basic issues as whether to argue (and upon which criteria, e.g. patient care, administrative structure, etc.) for separate units of hospital-employed professionals and campus-employed professionals or for a single unit. Another position might be a unit of all patient care professionals, hospital and campus, in one unit and a second unit of all business professionals, hospital and campus. In any event, Board unit decisions to date are not very instructive on this issue. Consequently, the university should review the Board's historic industrial criteria of "community of interest" and evaluate the facts of each particular case, including the union's unit position, and fashion its arguments accordingly. This approach would also apply to public universities in most states when dealing with state labor boards.

Technical Employees

The uniting issue is much the same for the technical classifications as for the professional classifications discussed above. Universities with teaching hospitals generally employ large numbers of technical employees both on the campus and in the hospital. Consequently, applying the Board's criteria to each factual setting could result in either separate hospital and campus technical units or a single unit of all technical employees.

Clerical Employees

The Board's decisions on hospital units have usually placed office/business clericals in a separate unit while placing other clericals (such as storeroom ward clerks) in the hospital service unit. Once again, universities normally employ hundreds of clerical employees on the campus as well as in the hospital. The uniting issue is in some aspects the same as with technical and professional employees (two separate units vs. a single unit), and yet somewhat different in that little, if any, hands-on patient care is provided by most hospital clericals. In addition, the Board's hospital clerical decisions add a second issue of whether any clericals should be in a service unit in light of the fact that on a campus, some clericals also work outside the traditional office environment and thus their placement in a service unit might also be less than appropriate. There has been at least one state labor board decision that placed non-office clericals in a patient care technical unit rather than in a service unit.[3] It is important, though not very satisfying, to note that when dealing with such issues, the facts that prove to be pivotal in the Board's thinking may be pure conjecture before the decision is rendered.

Service and Maintenance Employees

It is generally established that most of these employees do not provide direct, hands-on patient care and thus the factual similarities between hospital and campus classifications may outweigh the differences. At the same time, there is the geographic location issue if the campus and hospital are physically separated by some distance. This issue, of course, applies to all units under discussion, not just service and maintenance. This issue of physical separation may prove to be a pivotal factor for a labor board, especially if the board finds that there is little transfer on promotional activity between the campus and the hospital (i.e., there are separate labor markets, commuting patterns, etc.). This is especially important in clerical, technical, and service/maintenance uniting issues where labor markets tend to be more localized than professional employee labor markets and the Board has relied on such factors in making some unit decisions.[4]

Security Guards/Police

The National Labor Relations Act and many state bargaining statutes provide that security guards or campus police be placed in separate bargaining units. As such, the labor boards generally have had little discretion on this issue, other than the above issue of geographic location, which raises the possibility of more than one unit. At the same time, the number of employees in these classifications tend to be small and this may influence the Board to establish one unit in spite of geographic separation between the hospital and campus.

Therefore, in settings where universities operate teaching hospitals, the configuration of bargaining units will be influenced if not determined by the facts emanating from that hospital/campus environment. In turn, the resultant configuration of the bargaining units may influence the extent to which hospital and campus differences will be either minimized or accentuated in the bargaining process. But, in either case, the bargaining process must effectively deal with such differences.

DISTINGUISHING CHARACTERISTICS

There are several distinguishing characteristics between university teaching hospitals and their campuses. Many of these have a direct effect on the bargaining process and its outcomes. The following is not an exhaustive list, but rather a highlighting of some of these characteristics and a brief discussion of the possible effects on bargaining.

Mission

Although most universities have as their mission teaching, research, and public service, a teaching hospital's primary mission is usually regarded as that of patient care. And, although teaching and research are clearly important missions within a teaching hospital, patient care remains central, just as student education is central on a campus.

As such, these differing missions center the focus of bargaining on different employee groups in each setting. On the campus, the faculty, primary providers of student education, have the central role, while in a teaching hospital, most professionals (physicians, nurses, and pharmacists) and technicals have the central role in providing the patient's care. This focus enhances the importance, and thus the bargaining power, of several groups of staff employees not mutually shared by fellow staff employees on the campus.

Sources of Income

Teaching hospitals depend almost totally on service-related income in order to operate. As such, a hospital's management style is best characterized as "bottom line". This, in turn, requires management to be continually conscious of the needs of its patients/customers and the costs associated with the services it provides. It naturally follows that management is concerned with issues of efficiency and productivity and must be able to respond quickly to changes in the patients' needs for services, demands on service, and the prices charged for such services. Labor contracts must therefore be negotiated in such a manner as to protect this management flexibility and allow it to be expeditiously exercised, a need that tends to have shorter response time than for many campus operations that operate on annual, budgeted income.

External Regulations

An additional need for flexibility in managing a hospital is brought about by the numerous regulations of the federal and state governments and the Joint Commission on Accreditation of Hospitals. These agencies define many operational standards and controls. This situation has been aggravated by the drastic changes in the cost containment/reimbursement climate of the insurance industry as well as the governmental agencies. Such pressures place additional demands on labor and management negotiations, with some factors a disadvantage to one side while other factors disadvantage the other. In turn, the greater the uncertainty of the environment in which the bargaining is taking place, the more difficult it is for the parties to fashion a satisfactory, long-term agreement. And shorter term agreements tend to inhibit labor relations stability, potentially creating additional problems for that hospital.

Competition

Many university teaching hospitals, especially those in urban metropolitan areas, are in direct competition with community hospitals, clinics, and other providers of similar patient care services. This competition is probably best exhibited by observing the level of sophisticated diagnostic and treatment programs and equipment in each facility. Efforts to remain competitive and, for most teaching hospitals, to be on the cutting edge, require the expenditure of major financial resources on new facilities, equipment and staffing. All of this is to maintain an attractive environment for physicians and their patients. And to provide high level patient care, staff must be competent and reasonably satisfied with their jobs if such patient care is to be delivered. It is imperative that the bargaining process and resultant agreement establish and maintain an environment that is conducive to high employee morale, thus attracting and retaining highly competent staff.

In addition, such labor agreements must facilitate a hospital's ability to respond to staff training needs. And job classification systems must be sufficiently flexible to recognize and accommodate evolving duties and responsibilities.

Health Care Licensure Standards

Unlike most staff employees on a university campus, many hospital staff, by law or regulation, must, achieve and maintain proper licenses and certifications. This environment requires management negotiators to ensure that contract language does not inhibit the hospital's ability to require the maintenance of proper licensure and that such subjects as staffing levels, promotions, transfer, layoff, and recall coincide with licensure/certification requirements. When individuals with certain licenses or certification are in short supply, it is important that the labor agreement not impede the hospital's ability to attract and maintain such personnel.

Continuous Operations

University campuses are primarily five-day-a-week operations. There are some exceptions, of course, such as libraries, animal care, security, and power house operations but these functions employ relatively few employees compared with weekend hospital staffing requirements. The same holds true for 24-hour operations on the campus versus in the hospital.

Such operational variations clearly create different issues and pressures, whether in bargaining with hospital employees in their own bargaining unit or in a bargaining unit with campus employees.

In conclusion, there are several major differences between the work environment on a university campus and that in a university hospital. The bargaining process must recognize these differences so that the labor agreement allows both of these environments to remain productive, competitive, and responsive to their respective constituencies.

ARBITRATION ISSUES

Contract administration also has its differences between dealing with unionized hospital and with campus employees. This is probably best exemplified by a review of some hospital arbitration cases. Arbitrators, when dealing with disciplinary actions based upon employee conduct that adversely affects patient care, have generally supported stronger disciplinary penalties than in non-patient care settings including campuses. This is so because arbitrators have recognized the vulnerability and dependency of patients during their illness and a rightful expectation that they will receive proper, professional care while in the hospital. To understand this point, it is helpful to review a few hospital arbitration cases on various subjects.

Sleeping on the Job

In the hospital environment, medical emergencies can develop at any point in time. Consequently, an employee who is sleeping is not available to provide timely medical assistance in an emergency. The problem can be even more serious during off-shifts when staffing is minimal and attention to duty even more critical. With such facts, it is possible that an arbitrator will sustain a discharge for a first offense.[5] The same first offense in most campus environments would most likely not result in a sustained discharge but rather a written warning or disciplinary suspension.

Violating Hospital and/or Professional Ethics

While there are some opportunities for campus employees to violate ethical standards, hospital employees seem to have more and greater opportunities and such breaches, especially those involving patient care, generally carry with them greater consequences. Disclosing confidential information to patients or about patients or releasing medical records of patients is a most serious offense. In some cases, the conduct might also violate laws regulating privacy and medical records. Arbitrators have to weigh the impact of such misconduct on the patient's well-being and privacy in determining whether discharge is an appropriate penalty. In some cases they have found it to be so.[6]

Abuse of Patients

As discussed above, patients, because they are ill, are dependent and, many times, vulnerable. In addition, some are irritable because of their condition, while others are elderly, weak, or mentally deficient. In any case, they are potential targets of abuse by employees, verbal, physical and sexual. The fact that the patient may have initiated or contributed to the incident is usually not controlling. Employees must shoulder a greater responsibility for conducting themselves appropriately.[7] Most arbitrators will usually view physical abuse as a more serious infraction than verbal abuse.[8] Arbitrators are also cognizant that abuse of patients may subject the hospital to significant malpractice liability, which adds to the seriousness of the misconduct.[9] Sexual abuse of a patient is considered to be as serious as, if not more than, physical abuse. This is especially true when there is no patient initiation nor consent.[10] Comparisons in this areas can be made with students in a classroom or student housing setting, but in most situations it would be difficult to prove to the arbitrator that the student is as dependent or vulnerable as the patient and thus that the seriousness of the misconduct is the same as when a patient is involved.

Drug Use and Abuse

While drug use and abuse by campus employees exists and is a serious problem for university administrators because of the students, it can present an even greater problem in the hospital where drug availability and quantity exist. Such circumstances can lead in two directions: the unauthorized use of drugs by employees themselves, either on or off the job, or the theft of drugs for profit through sales to other individuals. In either case, assuming the facts are proven, arbitrators have little difficulty in sustaining discharges for first offenses. This is also generally true in cases where a hospital employee has been convicted of serious drug charges that were not related to the employee's employment at the hospital.[11] The theory here is that the employee has access to drugs in the employment setting and that the public's confidence in the hospital could be diminished if it knew that a convicted drug felon was working around drugs and patients. The same result might also be achieved in campus environments where employees would have contact with students. The difference here is that such a standard could be used for almost all hospital employees, but most likely for a much smaller percentage of campus employees.

Concluding Comment

The intent of this chapter was to acknowledge that there are some similarities between a university hospital work environment and a campus one, but more importantly to call attention to some of the legitimate differences that must be addressed by university and hospital administrators when dealing with labor unions and the collective bargaining process. To refuse or fail to give such recognition will harm both organizations and generally will result in a unsatisfactory experience with collective bargaining.

ENDNOTES

1. See Cornell University 183 NLRB 329, 74 LRRM 1269 (1970).
2. See such cases as Tuskegee Institute 209 NLRB 773, 86 LRRM 1082 (1974) and Harvard College, 229 NLRB 586, LRRM 1390 (1977).
3. University of California Clerical/Patient Care Technician decision.
4. Harvard College and District 65 Distribution Workers 95 LRRM 1390.
5. Douglas County Hospital v. AFSCME Local 2845 650 GERR: B-2.
6. Beth Israel Medical Center v. District 1199, LVH.
7. Kaiser Foundation Hospitals v. SEIU Local 250, 72-2 ARB 8673.
8. St. John's Episcopal Hospital v. NYSNA (1978).
9. Salinas Valley Memorial Hospital District v. SEIU Local 250, LAIG 1803.
10. Mount Sinai Hospital v. District 1199 National Union of Hospital and Health Care Employees, League of Voluntary Hospitals.
11. Providence Hospital v. SEIU Local 250 BAHA - 25.

PART TWO:

Managing the Negotiations Process

There is a story of two master chess players who, after a lengthy and intense session, are at a stand-off. Both have effectively countered their opponents' responses and both individuals contemplate the final brilliant move that will result in checkmate. At that moment, a pet dog comes running through the room, knocks over the chessboard, scatters the chess pieces on the floor, and pitches the players' glasses of water onto their laps.

There is always another unforeseen dimension to the bargaining process, even when it appears that both parties are at a stand-off. A variety of actors and political forces are present, either outwardly or in a subtle manner. What transpires at the bargaining table represents only one dimension of the negotiations process.

The riskiest mistake either party can commit is to enter into negotiations without a clear sense of priorities. The groundwork needed to develop such priorities must be set during the earliest stages of preparation for table negotiations. Further, without the understanding and support of trustees or presidents in the development of bargaining priorities, the labor relations practitioner may have an immeasurably difficult time obtaining their ratification of the agreement.

Dr. Ray A. Howe identifies the cyclical nature of the bargaining relationship. He writes of the potential for productive outcomes. Howe exhorts administrators to confront their responsibilities and identify themselves as "managers". He argues that progressive and productive relationships are mutually beneficial to the parties involved.

At the outset of their chapter on preparation for negotiations, attorneys Allan W. Drachman and Naomi R. Stonberg write, " . . . if management identifies goals and objectives, collective bargaining can be a positive experience." The chapter elucidates questions to consider before approaching the bargaining table. All of the practical essentials are discussed.

In "The Importance of Setting Bargaining Objectives", Mr. Gary W. Wulf discusses election and negotiation goals. The principles enumerated by the author are excellent. Mr. Wulf also describes how practitioners should develop and communicate bargaining objectives.

The final chapter in the Section, written by Mr. Gregory L. Kramp, Esq., concerns strike management. Although work stoppages by unionized employees, particularly faculty, are not common, the spectre of a work stoppage by support staff unions is an ever-present element of the negotiations process. Mr. Kramp argues that an important management objective is to afford employees the opportunity to return to work quickly following strike settlement. He also includes the Work Stoppage Policy and Procedure covering the University of California, Los Angeles.

The Collective Bargaining Process and the Potential for Productive Outcomes

By Ray A. Howe

The process of collective bargaining is inherently cyclical. Its initiation and the early stages of organization and preparation point, by design, towards negotiation. Negotiation, in turn, aims for contractual agreement, and in one way or another invariably accomplishes it. This, by nature, requires implementation. Since contracts are of a fixed duration, however, implementation, which is the culmination of the current round, is also the precursor of negotiations yet to come.

The phenomenon thus achieving orbit may be repetitive and regressive, but, if at all possible, it ought to be progressive in nature. Such a prospect, which would be of mutual benefit to all concerned, should be sought most energetically and earnestly by both parties to the proceedings.

Under the best of circumstances, fulfillment will not occur rapidly, but, given the fact that collective bargaining in American higher education is approaching the completion of its second decade, it is neither untimely nor unreasonable to expect visible signs of progress now or in the near future. If these signs are absent, and all too often they are, this may be the consequence of lack of understanding rather than lack of interest. There is, even today, recognizable lack of understanding of some of the most evident and elemental facts about post-secondary collective bargaining, its duration notwithstanding. For example, in less than 20 years, we have reached the point where the percentage of collegiate faculty sheltered by collective bargaining equals the percentage of unionized workers in the entire private sector labor force almost half a century after the passage of the Wagner Act. Further, it seems not yet fully appreciated that, just as unions in the private sector, despite their minority status, wield a formidable force in respect to some aspects of public policy important to them, so, too, unions is collegiate circles, if they choose to make it a matter of pre-eminent priority, could play a similar powerful role in the formulation of public policy regarding U.S. higher education.

Positive and productive bargaining relationships, which are of mutual benefit and interest to union and administration alike, are beyond argument an important responsibility of each. Still, a convincing case can be made that a greater responsibility rests with the management side of the table. The basic justification for the existence of an administrative apparatus is to ensure that whatever may transpire in the affairs of the institution redounds to the benefit of the institution and of all who inhabit it and enhances, rather than inhibits, the mission to be performed. The coming of collective bargaining is no singular exception to this charge. In the absence of a dual effort, initiative and on-going leadership must emanate from administrative sources.

Theoretically, given the cyclical nature of collective bargaining, the beginnings of positive effort may be introduced at all stages, and may appear equally effectively at any of them. If the administration is the moving force, however, it can most readily establish its credibility in that purpose in the implementation phase. There is a logical reason for this, which is the basis for this chapter.

Collective bargaining comes to a campus by faculty determination, and only in such a manner. Administration has an apparent, and usually legally defined, role to play, but it is primarily a reactive rather than a proactive participant. Administration must determine how it will conduct itself, but it fails to dominate center stage in the first act.

At the second stage, the entry into negotiations, the administration may move to center stage, not as the dominant force, but in company with faculty. Here the parties share the spotlight and the power. It is true that an important ingredient of effective negotiations is the creation of mutual credibility and of mutual respect, without which the achievement of a contractual agreement will be difficult, sometimes impossible.

Two observations related to this are in order. First, the evolution of mutual credibility and respect, however desirable, is a means to an end and not an end in itself. Second, its appearance, if accomplished, occurs behind closed doors and is evident only to the relative few who come to the table to bargain. Since the final form of the contract is likely to be far less satisfying than the aspirations of those who invoke the process, even the most earnest efforts to proclaim the tone of the negotiations process are apt to be eclipsed by disappointment with the content of the contract.

Just as the human pre-natal period, while vital in shaping many of the significant characteristics of the entire life-span of the child coming into being, is scarcely a period of socialization or enculturation, so, too, the period of potential maturation of the collective bargaining process at an institution must await the actual emergence of the first offspring.

Collective bargaining is, undeniably, a highly complex and controversial consideration. For some it is anathema. For many more it is a strange, even alien, experience, remote either in actuality or in anticipation. Lack of even the most fundamental familiarity is a handicap if understanding of the phenomenon is ever required. Such unfamiliarity is often so great that, even if an effort is made to understand or appreciate, the most immediate problem is where to begin to comprehend the essence of the process.

To most observers of the collective bargaining scene, however proximate or remote, the high drama and the vital significance seem reserved for the mysterious rituals that are practiced for endless hours behind the closed doors of the negotiating room. This is simply not the case.

What transpires in the actual negotiations is but the tip of the iceberg. It constitutes only the preliminaries. The great tests of the validity, the vitality, and the utility of the document that takes form there, the collective bargaining contract, come only after it departs the bargaining table and leaves the hands of the negotiators.

Effective contract implementation can go far to compensate for weaknesses in the negotiated contract, and it can make a weak contract relatively strong in substance. Conversely, ineffective contract implementation can debilitate the best of negotiated agreements. It would be going too far to place an exclusive importance on either negotiations or implementation of a contract, for both are certainly vital. The two considerations, negotiation and implementation, can, perhaps must, be separated for purposes of analysis, but it should be borne in mind continually that in the world of practical affairs they are not only inseparable, they are interacting. And the interaction is reciprocal.

Problems arising in implementation that are not well resolved are items that will predictably arise at the bargaining table in the course of negotiating the next contract. Conversely, errors of either commission or omission in negotiations will not only be revealed in the implementation phase, but may tend to compound themselves in the process.

Thus, we have at least some minor confusion as to where one phase begins and the other phase ends. Collective bargaining is, as has been said, cyclical. Once initiated, it has an incliniation to maintain, indeed sustain, itself.

Both negotiation and implementation of a contract are worthy matters for analysis, but it should be noted that no matter how infrequently or badly the former is dealt with in the literature, the latter, by comparison, suffers from relatively abject neglect.

Comprehension of the problems related to implementation, which must precede their successful solution, requires at least some rudimentary understanding of negotiations, especially as that aspect of contract development approaches termination.

The enduring objective of collective bargaining is a contract, a mutually determined and mutually binding agreement. The contract must be created and given some concrete form. Yet, reducing the contract to writing is but the act of a moment. From its inception, it is subject to change, by interpretation as it achieves existence and by more formal modification in subsequent negotiations.

The first vitally important step in breathing life into a contract is ratification. Ratification is, of course, the deliberative act on the part of the constituency of each of the two parties involved in bargaining that affirms the mutual acceptability of the document *in toto*.

The emphasis here on "acceptability" may be misplaced, or possibly misunderstood.

It is not really the primary function of the negotiating teams to produce an over-all agreement that is mutually satisfying to the two sides. It is rather their burden to produce a document that is mutually unsatisfactory to each of the two sides. Irrational as it may sound, the best agreement may well be one that is unsatisfactory to all concerned with it, provided that it is relatively equally unsatisfactory to each.

This is the realistic context in which ratification should be deliberated and acted upon.

Either constituency may decline to ratify if it so chooses, in which case there is no contract. Should this occur, negotiations reconvene. Whether they reconvene between the same two sets of negotiators as before depends, of course, on the relative extent and intensity of the dissatisfactions of the constituency that declines to ratify. New participants are not, at this point in time, normally a contribution. Indeed, they will probably constitute a disruption, at least in the short run. But this will be as it must, since each party retains, even in this critical moment, the right to designate its own representatives.

In the usual run of things, of course, none of this will happen. The document will eventually be ratified, but there are two or three important comments regarding non-ratification that must be made.

First, refusal to ratify is predictably far more likely to occur on the part of the faculty rather than of management. This fact is frequently misunderstood by management and even more often by interested on-lookers, but there is a clear, simple, and understandable reason for it.

Throughout negotiation the management team has, relatively speaking, much more direct, easy, and regular access to the totality of its constituency. Here, it is assumed, each constituent will insist on his or her individual right to express convictions or conscience and the negotiator may encounter some difficulty. Yet, because the administrative negotiator has greater opportunity to discuss with the constituency the issues requiring resolution, both general and specific, the varying possibilities for solution, and the priorities of preference among them on the part of the constituency, the management negotiator has parameters in mind at all times that are, comparatively, much more clear and precise than those of faculty. The problem then is, quite simply, not to exceed those outer limits. If this is done, if settlement is within the guidelines, there may be and should be reasonable confidence of ratification by the constituency of any tentative agreement achieved.

The negotiator for faculty seldom, if ever, enjoys this precise situation. While guidelines are received from this constituency, and limits to authority at times, these are usually received in advance of negotiations. During negotiations, there may be reliance on an advisory body, even a representative one, perhaps an executive board, which, it is hoped in consequence of its ongoing awareness and input, will reflect support for that which is brought back from the table for ratification. But there still remains the membership, which reserves, quite properly, the right to express itself, both individually and collectively, regarding the agreements reached, in whole or in part. Only after the fact of agreement does the membership of the faculty bargaining unit really learn the nature of the comprehensive agreements achieved tentatively at the table. Only after this realization can the membership express its reaction. Such reaction is thus comparatively unpredictable.

Thus, ratification by faculty is far more problematical.

Negotiators are often criticized because they do not, indeed cannot, keep all who are interested, concerned with, and deeply affected by their labors continually, currently, and extensively informed about what is transpiring at the table. If this were even to be attempted, much of the effectiveness of the negotiators would be undone or, at the least, seriously undermined. While it is questionably true, for example, that the capacities of a negotiator are signally dependent on the information provided by a broad number of colleagues, it is equally true that, during the negotiating process and especially as it approaches culmination, the favor cannot be reciprocated. Negotiations as a process is utterly dependent on input of the many, but is equally dependent on the conduct of the few. This is applicable to both sides of the table.

There is another aspect of non-ratification that applies similarly and substantially to either constituency. If it should be determined that ratification will be withheld, it is wiser to reject the entire document and return it to the table for total or at least substantial reconsideration.

The negotiating team, whichever side it represents, should be made as explicitly and completely aware as possible of the reasons why the contract was rejected, but it would be extremely unwise to accept most or almost all of the contract and send back only selected portions of it for renegotiation. In so doing, one hamstrings one's own negotiating team, for two reasons.

First, this kind of action ignores the fact that the contract, as tentatively agreed to, is not a loose jumble of completely independent items. In the process of construction of a contract, especially in the latter moments, the so-called "crunch," frequently concessions are made regarding one article in order to attain some major objective in another. In consequence, compromises occur between items as well as within items. If a party rejects one item, it had better understand that it may be rejecting the larger entity of whatever combination of compromises created that item as a part of its existence. This may not be what the rejecting party either anticipates or intends, but reality often intrudes and dictates this consequence.

Second, if a negotiating team is sent back to the table to renegotiate one single item that has been rejected, that team is placed in a difficult position. Bargaining strength depends on many factors, but at base it is the capacity to maneuver, or "wiggle". "Wiggle room" is the lifeblood of the negotiator. When a practitioner runs short or out of it, effectiveness diminishes proportionately.

If there is but one isolated item on the table, if there is no other item on the table on which one can "wiggle," any idiot can do the negotiator's job. It's just a matter of sitting there till somebody cracks or until some external element becomes the arbitrary determinant of matters at the table.

Better by far to reject the document entirely, letting the negotiators know why there is objection, what changes are sought and what, if anything the constituency might be ready to give in order to get what is wanted.

There is one more significant aspect of ratification. In principle, each party ratifies, or declines to ratify, independently, totally independently. Yet, in a sense, this is not true. An experienced negotiator can sense, or "smell" the prospect of settlement well in advance of its actual accomplishment. This, of course, has many implications, one of which is that the administrative negotiator, if wise, broadens the priority areas of concern to embrace the responsibilities of the other party.

Specifically, as has been said, the administrative negotiator can be reasonably confident that his or her constituency will ratify. But if all the labors of both parties are not to go unrewarded, the other party must also ratify. It is futile and frustrating, perhaps useless, to arrive at a tentative agreement at the table that will not be confirmed. Each party to negotiations has, in consequence, a vested interest in the capacity of the other to convince its constituency of the desirability of ratification. Each party will or should make an assessment of the other to accomplish this. Each will try to augment that capacity.

In exceptional circumstances, when ratification possibilities seem most in doubt and both parties are concerned, this may even take the form of open and seemingly crass counting of votes, that is, what blocs will be for this or against that, and how it all balances out in respect to votes for or against ratification.

Far more prevalent, however, will be a much more subtle, almost subliminal, form of support, seldom overtly accentuated or acknowledged in the construction and the presentation of potential settlement packages. Elaborate argumentation, well organized and complete, will be presented to demonstrate the inherent value of various elements of the settlement package. These arguments will be expressed to the adversary's constituency.

The adversary team may ignore or even reject such argumentation at the moment but such of it as may be useful later will be absorbed and filed away even as it is volubly contested. After all, the task of the faculty negotiator is only partially done when the parties stand up and shake hands on a tentative agreement. There must still be done a formidable job of selling the tentative agreement to that constituency, an agreement replete with many compromises, any one of which may well be highly controversial when reviewed by a body composed in substantial part of idealists or moralists who may persist in the vain hope that collective bargaining will somehow produce the millenium.

Thus, the adversaries, out of common interest, may labor assiduously, albeit even subconsciously, to contribute to the effectiveness of the other.

Hopefully this spirit of cooperation will be at least tacitly appreciated and will spill over to provide a degree of tone to the post-negotiation relationship.

But let us assume that ratification has been achieved. A contract comes into formal existence and the task at hand is to live with it. Living with a contract is always something of a burden for at least three very basic reasons.

First, it is a requirement, as distinguished from a voluntary act.

Second, the contract is, by nature, a confining document, somewhat restrictive of and inhibiting to the exercise of the latitude and the flexibility so highly prized by any administrator of quality. (It is, perhaps, an irony that the mediocre administrator may find less difficulty in living with a contract than may a good administrator. A thoroughly tight contract might allow for push-button, decision-free, responsibility-free administration.)

Third, it is, as has been noted, a bundle of compromises and the process by which these compromises are arrived at is not entirely, perhaps not even substantially, a rational one. In consequence, the compromises themselves may not appear to, and indeed may not, make sense. This is especially true if any individual compromise is considered in isolation, apart from the several other considerations that made such a compromise seem desirable or necessary at the time it was made.

Yet, in a collective bargaining situation, the parties certainly must live with the contract in one fashion or another. The urgent challenge is to try to live with that contract in such a way as to make living with it a positive, contributory, and generally stabilizing experience for the institution and for those who compose it.

There is a significance here that should not be ignored. Administrative participation in negotiations, which began as a labor of the many, then became the burden of the few, once again becomes the province of almost all administrators. Indeed each administrator has a signal importance in determining the success of implementation.

The first necessity, however, is the relatively pedestrian one to publish and disseminate the contract to all those affected by it in any way, either directly or indirectly. This can have a most positive effect, offering, for example, some sense of reassurance and some reference point to the individuals concerned. But it should never be ignored that the distribution of the contract also has some negative effect, in that it also provides a ready reference for those who incline to flyspeck or to look for loopholes through which they can either create or expand a breach. Happily, the latter viewpoint seems to be in the minority, but to the degree that it does exist on the part of either faculty members or individual administrators, it will prove to be an irksome, perhaps even disruptive factor.

The mere distribution of the contract should not, however, be either expected or relied upon to do more than it really does. It is certainly, for instance, no sufficient substitute for a planned program of in-service education for all administrative officers whose responsibility it is to execute or implement any provision of the contract. Such a planned program of in-service education should expose all administrators to all provisions of the contract and to as many implications of the contract as are discernible. The most immediate purpose of this in-service education is to eliminate, as far as possible, and certainly to minimize, the possibility for violation, misinterpretation, or misapplication of the contract. Potential errors of omission should be regarded as equally important with potential errors of commission. Even a well-planned program of in-service education will never be 100 percent effective, but it can go a long way toward that objective.

A similar process of in-service education aimed at understanding the contract would be appropriate for the faculty. This could be provided by the administration, the faculty organization, or the two jointly.

It might be contributory to have the accomplished contract scrutinized rigorously by an experienced person who was in no way involved in the development of the contract. Such a review could illuminate and identify potential pitfalls for both parties, who themselves might be too familiar with or engrossed in the language to view it objectively.

Such in-service education as is provided, if it is to be effective must not be a one-shot experience. There must continue throughout the life of the contract a persistent, repetitive, calling of attention to the significance of certain portions of the contract. This is true no matter how high the quality of the document may prove to be.

While the construction and creation of a contract is a dual effort involving both administration and faculty, by and large the enforcement or implementation of a contract is not. Why this is so will be dealt with shortly. That it is so is most important. Management bears the primary and general responsibility for implementation, and thus the fullest understanding of the contract both in general and in painstaking specific by each administrator is vital.

This fact has a deep significance. It is essentially a fixation of responsibility. This is inescapable. It may be that the best justification of administration is that it exists for the major purpose of bearing responsibility. If this were its only function, it would still be a fundamental and important one. But collective bargaining also emphasizes that authority is still with administration along with responsibility. That authority should be circumscribed; it should be both questionable and questioned; it should be subject to appeal.

Some analysts of this question go a bit further. Myron Lieberman, in an article in Harper's, made the following observation, with which this observer can readily concur: "...The paradox of faculty unionization is that, although it is a faculty initiative, perhaps its most salutary effects will not be what it does for professors, but what it will do to make administrators more efficient, more alert to innovation and more responsive to the public interest."[1]

Eric Hoffer, the longshoreman-philosopher, put it a bit differently. He said, "It has been my observation for years that, while a wholly independent labor force does not contribute to management's peace of mind, it can yet goad management to perfect its organization and to keep ever on the lookout for more efficient ways of doing things."[2]

There is a deeper significance. In assuming responsibility for implementation of the contract, administration must become management. When faculty actively invokes collective bargaining, and in so doing nominally offers itself as a labor organization, it may not intend that it really be treated as such. Still, discretion dictates that in at least some respects it must be so regarded. Further, by designating itself as a labor organization, faculty declares in a muted voice that administration is, in fact, management.

It would be highly contributory if the negotiators of the contract, especially the chief negotiator, were involved either directly or indirectly in the responsibility for enforcing and implementing the contract. Much will often hinge upon the intent of the authors, on occasion even as much as upon the literal interpretation of the product of the authors, if a successful solution of a problem is to be found. The authors possess a singular and non-reproducible familiarity with the document that can be invaluable as a resource to all concerned.

The critical and formal process through which the proper enforcement of contract is provided is, of course, the grievance procedure. A grievance is best defined as an allegation of violation, misinterpretation, or misapplication of some specific provision(s) of the contract. This should be the complete definition of a grievance and this definition should be expressed explicitly in the contract, as should, of course, the precise procedures and steps involved in the grievance process.

It is almost impossible to attach too much importance to the matter of how the operation of the grievance process is perceived. It is a contract-enforcing mechanism, and, as such, is contributory. It is a conflict-resolving process and not a conflict-creating one. It is, by intent, an assurance to both parties that the contract will be implemented equitably. Both parties should be interested in this. Both parties should subscribe to this.

Well conducted, the grievance procedure has great possibilities, but it also has limitations. If, as was proposed, the definition is confined to allegations of violation, misinterpretation, or misapplication of specific terms of the contract, the grievance procedure will serve its complete purpose. The grievance procedure is not an appropriate device for gripes about collegiate matters. The latter certainly should be provided for but in some less formal, more flexible, or empathetic 'one-to-one' relationship than the grievance procedure can really provide.

In short, one should not expect the grievance procedure to do more than it is designed to do, but one should expect it to do what it is designed to do.

No single more important aspect of the orientation or in-service education of administrators to the contract can be pinpointed than complete familiarity and a sense of comfort with the grievance process.

Much is made at times of the fact that only one side, specifically the faculty, can grieve. This view seems to miss three important points. First, it assumes rather strongly that there is some advantage to grieving and some disadvantages to not being able to grieve. This is not the case. Second, it seems to suggest that grieving is somehow a capacity to injure or inflict pain. This negative approach to grievance is not only unbecoming, it is grossly inaccurate. The capacity to do this may be present, but if so, it is a malfunction rather than a function of the process. Third, it indicates a lack of understanding of the whole business of contract implementation.

The fundamental responsibility and authority to implement the contract rest with administration. The initiative to act is administration's. The rule of thumb is obvious but bears enunciation. Administration acts and the union, collectively or individually, reacts. The filing of a grievance is this reaction.

If the filing of the grievance is evident as an act of hostility, then the problem is the existence of the hostility, not the existence of a grievance procedure or the act of grieving.

If it is well constructed and designed for handling matters judiciously and with reasonable dispatch, the grievance procedure can serve one or more contributory purposes.

While the filing of any one grievance is not a danger sign, the filing of many grievances, especially in one quarter, certainly is. This at least calls for the review of the adequacy of the contract and contract language and the administrative attitudes and behavior in implementing the contract. Either may prove to be less than desirable. Such review, of course, may reveal harassment by faculty acting either in concert or as independent, individual elements. Under any circumstances, the filing of a significant number of grievances is a phenomenon worthy of critical examination and, if possible, correction.

The wise administrator not only will deal fairly with each grievance as it arises, but will expedite it as much as possible. One of the cardinal principles of justice is that it be timely. Inordinate delay, or the existence of unnecessary steps that could be regarded as impediments to resolution is undesirable. One hesitates to say the fewer steps the better, but this is close to the truth. The more laborious the appeal process, or the more cumbersome, the less effective it is likely to be.

Beyond the importance of dealing with grievances, there is an urgent responsibility to analyze grievances, both individually and collectively. They may come about, for example, as a consequence of the attitude of an individual administrator. This kind of a problem should be approached as soon as it is recognized.

The occasion may arise in which an individual administrator will stand rigidly on picayune, even highly imaginative, technicalities, out of keeping with the more general administrative stance. This will attract the attention not only of the members of the bargaining unit within the specific jurisdiction, but of the union as a whole. Unpleasantness may result, but the situation is manageable.

More pervasive and more serious is the situation in which the general tendency is to "pass the buck upward", either by neglecting to render a carefully analytical decision, at the lowest level, or by accompanying such a decision with a verbal explanation that the decision, if negative from the faculty view, is imposed upon the decision-maker by powers or persons beyond his or her station and is not consistent with his or her personal preference. The grievance procedure is thus one standard for measuring the adequacy of administrative acceptance of responsibility and authority, although that is not its primary purpose.

But grievances are also indicators of items that are likely to appear as issues at the next round of bargaining. If this is readily appreciated, the administrative position for future negotiations can be determined and a well-prepared support devised on this basis of a careful review of grievances that occur. Analysis of the grievance items and procedure may serve other useful purposes in addition to those cited.

One more matter regarding grievances must be mentioned. The initial stage of a grievance procedure is usually, and wisely, an informal discussion between the person who feels aggrieved and the person against whom he or she feels aggrieved. This is commonly a prerequisite to the formal filing of a grievance.

Both parties to the contract intend this to reduce the necessity of the formal grievance, since both agree that problems should be solved as close to the source as possible.

Some mechanism should be provided, however, for transmitting agreements or solutions achieved in this informal manner to a central location. Lacking this, one of two things can readily occur:

1. Differing solutions, even conflicting responses, can be generated in remote corners of the college. When they do become known, and they predictably will, these solutions could create confusion and certainly will constitute inconsistency. A great deal of interface must occur among first echelon administrators concerning problems they encounter and between first echelon administrators and those to whom they report. This is good for the institution, no matter what its impact on collective bargaining.

2. It is possible that the informal solution agreed upon may violate or modify some other portion of the contract. This should be guarded against at all costs.

The existence and operation of a grievance procedure is often regarded as an inhibitor of or an impediment to other avenues of communications. A realistic and reasoned appraisal might lead to the conclusion that it requires more, not less, attention to channels of communication, in respect to both quantity and quality.

The well conducted grievance procedure, however it works, is a formal path that can point towards good faculty-administrative relationships. But it should never be assumed that effective working of the grievance process relieves one of the need to pay attention to alternative or parallel patterns of faculty-administrative relationships. Collective bargaining need not be a comprehensive set of relationships to the exclusion of all others. There are other formal and informal relationships that may persist, perhaps even flourish, some of which may well be worthy of careful cultivation.

Faculty senates can conceivably endure in parallel with collective bargaining relationships, but only with effort, and they will prosper only if both faculty and administration sincerely wish it. Departmental-divisional structures and processes will certainly continue. Committee patterns need not be vitally disrupted, although they can be undermined. The one-to-one informal channels that inevitably exist on any campus, while perhaps affected, can go on.

There is at least one formal and one informal post-negotiations pattern that should be explored. It might be a good idea to institute regular, perhaps monthly meetings between the key administrators of the college and the bargaining agent's executive board to discuss existent or potential problems and matters of mutual interest or concern which may be initiated by either party. Many headaches can thus be cured and many more avoided.

As an adjunct to this, the pivotal person most primarily responsible for trying to ensure good administrative-faculty relationships under the contract would be well advised to foster a feeling of mutual respect and trust with the responsible leader of the bargaining group. If this trust and respect can be evidenced in continuing conversations that are moderate in tone and frank and uninhibited in content, each can learn much about the problems and the possibilities of the other. This is no substitute for the formal relationships, but it can be a positive appurtenance to them, and it can serve preventive as well as curative functions.

This can result in a situation where either party may say to the other, "Look, I see a potential problem arising that I think we'd both like to avoid. Can you talk to so-and-so about tempering either this conduct or the attitude? If we can't accomplish this, we're heading for a predictable collision." This can work, but in no way is it easy to cultivate or to maintain.

The commentary provided by the task force of the American Association of Higher Education in its *Faculty Participation in Academic Governance*, published in 1967, is worth reviewing.

> In the long run, the attitudes of administrators and members of the boards of trustees towards the bargaining agent selected by a majority of the faculty will have a determinative effect on the nature of the relationship. If a bargaining agent is viewed as an aberration to be quashed or ignored, the introduction of bargaining relationships will be much more likely to disrupt the processes of higher education. Conversely, if the administrators accept the emergence of a bargaining relationship as an indication that serious problems of representation and policy exist, then the constructive contributions of the new arrangements may be maximized.[3]

This is equally as true of the implementation of a contract as it is of the formulation of a contract. Stated otherwise, while the actions of a bargaining agent may go far to influence the tone and the tension of relationships between faculty and administration, the reaction of administration is much more vital and will go infinitely farther in these directions. As the final statement of its extensive analysis of the current scene, the same AAHE task force offered this advice:

> As part of the conventional wisdom in labor-management relations, it is often said that employers get the kind of industrial relations they deserve. Although this admonition, like most generalizations, is not applicable in all cases, it contains sufficient validity to warrant a restatement in the context of institutions of higher education. The pattern of campus governance that prevails in the future will be determined by the measures taken by governing boards and administrators to deal with faculty aspirations now.[4]

It may be of some small comfort for administrators who have lost their faith in the shape of things to come that they may not have lost what it is hoped was their most prized professional attribute: the capacity to be leaders. Indeed, the challenge really is that, whereas in the past leadership has been simply expected of them, in the future it will be required of them.

Collective bargaining is recognizably a time of crisis. But one must recall the classic definition of a crisis. It is not a moment of tragedy or disaster. It is, rather, the point in the drama at which the fortunes of the protagonists begin to turn for the worse or for the better, and which of these it is the author determines with a steady pen. We have it upon us either as a monstrous burden or a gigantic opportunity that we are the authors of the drama.

Living with a contract is a relatively new experience for most collegiate administrators who encounter it. A determined and positive attitude is no guarantee of successful outcomes, but is a giant step along the road to that end. The lack of a positive attitude can be a guarantee of failure to achieve successful outcomes.

There is a relevant story concerning a priest who labored for a lifetime in the arctic tundra. He vowed if he was spared to retirement he would spend his last years dedicated to growing the beauties of nature that he missed so much in his surroundings. He found on retirement, however, that his meager financial resources would allow him to purchase only a small plot of sub-marginal, semi-arid land. But he labored with love and transformed his little corner of the desert into a veritable showplace.

One day he was visited by a former clerical associate who was taken on a tour of the garden, bush by bush, plant by plant, tree by tree. As the visit neared its conclusion, the younger man searched his mind for the precise words that would convey his full appreciation of what he had seen, and finally he was certain he had them.

"Father," he said, "it is truly a miracle what you and God, working together, have created here."

The old man nodded as he stood by the gate looking back. "Yes," he acknowledged, "but, you know, you really should have seen this place when God had it all to Himself."

The prospect or the practicalities of sharing authority or reallocating resources with faculty does not relieve administration of any burdens and, indeed, it imposes a few new ones. But it may not be as bad as it is sometimes envisioned. Administrators might well stand with a popular philosopher, Walt Kelly's comic strip creation, Pogo, and say resolutely, "We have met the enemy--and he is us."

ENDNOTES

1. Myron Lieberman. "Collective Bargaining in Higher Education" *Harper's Magazine* 243 (1457): 67-72, October 1971.

2. Eric Hoffer. *The Ordeal of Change* (New York: Harper and Row Publishers, 1973), p. 81.

3. ________ Faculty Participation in Academic Governance. (Washington, D.C.: American Association of Higher Education, 1967), p. 66.

4. *Ibid.*, p. 66.

Preparation for Collective Bargaining in Higher Education

By Allan W. Drachman and Naomi R. Stonberg

Collective bargaining in higher education creates conflicts that do not exist in the traditional factory model. If management recognizes the differences, identifies its collective bargaining goals, understands the union's needs, and properly prepares for negotiations, collective bargaining can be a positive experience.

The first step in preparing for bargaining is identifying some of the special problems in higher education that must be addressed. Faculty tend to be independent and opinionated. If you combine these traits with different disciplines and throw in counselors, librarians, and department heads, you have a bargaining unit with many built-in conflicts.

University and college systems need stable or increased student enrollment to survive. Frequently, unionization will occur at a time when student enrollment is down and when there is a surplus of faculty in under-enrolled departments such as foreign language and a shortage in growth areas such as computers or business. Public higher education systems are plagued by repeated severe state budget cuts as well as the disappearance of federal grant money.

UNDERSTANDING THE UNION'S APPROACH TO COLLECTIVE BARGAINING

The higher education union is in a particularly difficult position. Its membership will press for economic gains but will want to preserve the independence and discretion they enjoy as faculty members. The union will probably refer to itself as an "association" as opposed to a "union" and will resist any application of the traditional industrial labor relations model. The union will need to preserve the gains in governance and in faculty workload arrangements the faculty has made prior to collective bargaining.

The employer must carefully search for and analyze information about internal union structure and politics. What role will the national union play in your negotiations? Are there certain issues such as "academic freedom" and "tenure" that the union politically will insist on confirming in the collective bargaining agreement? Most higher education unions will have position papers on collective bargaining that should be studied.[1]

Finally, a careful look at the union's negotiating team should reveal some valuable clues. Does the union intend to bring a professional negotiator to the bargaining table? Will one academic area be more heavily represented than others? Will small groups such as librarians and counselors be part of the negotiating team? Will all the campuses be represented at the table? Will the large campuses have more representatives? Answers to these questions will help in the development of negotiating strategy.

SELECTING THE COLLECTIVE BARGAINING MODEL

Higher education tends to have a democratic approach to problem solving. Problems are solved using the collegial model with frequent involvement of the faculty in the decision-making process. Collective bargaining is an adversarial process and as such will change the relationship between the parties.

In most higher education systems, collective bargaining was preceded by some form of governance in which academic policies on curriculum, grades, admissions, course scheduling, matriculation standards, and teaching methods emanate from the faculty. The faculty also have a major role in faculty hiring, tenure, sabbatical leaves, and promotion decisions. Most of the subject matters included in the governance systems do not constitute mandatory subjects of bargaining.

The governance system and the traditional industrial model of collective bargaining have inherent conflicts. Prior to drafting proposals, the system must decide whether it wants to insist on the factory model and refuse to bargain about any non-mandatory subjects, or whether it is willing to attempt to integrate its governance model into the collective bargaining process.

A major advantage of the industrial model is that it is cleaner. The parties recognize that the relationship has changed. There is now a boss and employees. Discretionary decisions such as hiring and firing are made by management personnel without faculty input. The agreement codifies the wages, hours, and terms and conditions of employment. Discretionary decisions are outside the scope of the agreement.

The major disadvantage to the industrial model is that unilateral decisions by management will be lacking the valuable knowledge and input of faculty. Management may make better employment decisions with faculty involvement. Management may not want to or have the capacity to evaluate faculty. Management may believe that curriculum changes should be initiated by the faculty. The faculty and the president may have successfully handled academic policy matters through consultation. It is easier for a union to attack a management decision if its membership has not been consulted. Faculty involvement in the decision-making process makes the union accountable to a segment of its members if it fights the decision. Consultation brings with it responsibility.

A look at the reasons for unionization will probably reveal whether the governance system is worth preserving. If for instance, unionization resulted from a power struggle and the desire of the faculty to show the administration "who is boss" or to "punish" the administration, the collegial approach has probably not been working. If on the other hand, the faculty organized for extraneous reasons such as obtaining more money from the state or because other state employees organized, you may find that the governance system still works well.

It is possible to deviate from the traditional factory model without relinquishing managerial prerogatives. Management can agree to preserve the governance consultation model, while retaining the ultimate right to make the discretionary decision. The grievance and arbitration procedure must narrowly define a grievance and specifically exclude discretionary decisions from arbitration. If violation of contractual procedures are grievable, the contractual remedy must be restricted to repeating the procedures. If faculty input is required, the contract must contain a mechanism for unilateral actions if the faculty does not respond in a timely fashion. Finally, the agreement must be written in such a way that a militant union could not use the contract language to paralyze management.

ESTABLISHING ECONOMIC GUIDELINES

A myth of labor relations is that most of the time is spent negotiating with the union. How much money a state system receives for collective bargaining increases will depend on political clout and negotiating skills with the governor's office. Do not assume that higher education will be treated the same as the other state units. The state officials need to understand at the outset that the state system expects to be treated equally.

One central office staff member should be designated to serve as the board's representative in the negotiations with the state. If your representative determines that the higher education units are being given less money for collective bargaining increases, he or she will at least be able to warn the policy committee that a different standard is being applied.

You, as management, will find that word spreads quickly in the union camps. There is nothing more embarrassing than to have a union tell you that your money bottom line has been exceeded in state offers to other unions. You could be the last to know!

In order to prevent this, you should obtain clear written direction on salary guidelines from the state both in initial proposals and in the bottom line. These guidelines should apply state-wide. You should have a written understanding as to where the collective bargaining funds will come from. Without this understanding you may find that, although the collective bargaining law specifies that the legislature fund the agreement, the state financial representatives could be planned to take the settlement cost out of your existing budget. If this is the case, you must exert political pressure to prevent the erosion of your budget. Even if the state disagrees with you on guidelines or different treatment of state units, you must insist that the state level with you about its state-wide bargaining parameters. If the state is holding back and is not giving you the complete story, the unions will find out and you will have no credibility at the bargaining table.

If you find out that the state intends to make fewer funds available to higher education than other state units, you need to find out whether your board can live with this approach. If the board is not willing to accept less for its employees than other state employees receive, the time to fight this issue out with the political forces is before bargaining commences.

Once the system and the state have an understanding on economic guidelines, you should insist that you meet frequently with a state representative who can bring you up to date on the progress of negotiations in the other units. You will need access to this liaison person on short notice to obtain clearance for modifying your position, and to consult about settlement opportunities or crises in negotiations.

You may find that you have a good relationship with your faculty and that you may be able to assist the state in establishing a settlement pattern. If you decided to assume this leadership role, you must get the state's assurance that they will stick to your money settlement with their other unions. You do not want to be placed in the position of persuading your unions to trust you and settle first, then find out two weeks later that other unions have settled for more.

SELECTION OF TEAM

Labor negotiations impact the higher education system in many ways; the budget-making process, personnel administration, academic policy, and the operation of individual campuses are all affected. For these reasons a management committee should be involved in the collective bargaining process.

In higher education, there should be two levels of participation. The board of trustees working with the chancellor is one level. The college presidents should set the overall policy and goals. They should give the negotiating team its marching orders and establish its bottom line.

The board probably consists of elected or appointed members who have full-time, demanding jobs. If the board is large, it should create a collective bargaining policy subcommittee of no more than six members. The college presidents should serve on this subcommittee with the central office chief executive officer. This policy subcommittee should be available on short notice for briefing and policy decisions throughout the negotiations.

The key policy-makers referred to above should not participate directly in labor negotiations. In private industry, the company president rarely participates in labor negotiations. Negotiations can be very time consuming. It is counter productive to have certain players move in and out of negotiations. Furthermore, if these players participate in the initial round of negotiations, this may force direct participation with other bargaining units or in future negotiations.

The policy subcommittee should be briefed regularly through meetings or written communications about the progress of negotiations, each party's proposals, and the justification for management's position. Keeping current with the progress in negotiations is important because often the union will try an end run to the board, the chancellor, or the college presidents to exert additional pressure for acceptance of its proposals. A feel for the likelihood of settlement, its timing, the possibility of an impasse, work slowdown, or work stoppage will enable the key policy-makers to make plans for coordinating their labor problems with other political and governmental processes.

The Table Team

Careful selection of the management team that attends and prepares for the bargaining sessions is of key importance in higher education. The chancellor should assign at least one staff member full collective bargaining responsibilities. This person should coordinate the system's approach to collective bargaining and serve as the team's liaison with the policy subcommittee.

Although campus administrators are frequently overworked and although collective bargaining negotiations can be time consuming, each college should be represented on the negotiating team by a high level campus administrator. The campus representatives serve several important functions. They brief the presidents and their cabinets after each bargaining session; they gather information about local conditions at their campus; they analyze the possible negative effects on existing local structures of bargaining proposals; they review and respond to the union's representations about problems at their campuses that gave rise to certain proposals; they can alert the negotiator to the financial or academic chaos that may result from seemingly harmless language proposals; and they educate the team and assist in the preparation of proposals representing effective approaches to individual problems. Language which on its face seems simple and noncontroversial can have disastrous consequences at one campus and/or can destroy a local academic structure that has worked well.

The campus representative will ensure that the contract language does not strangle the small campuses at the expense of the large. The campus participation forces the local institutions to invest in the collective bargaining process. Frequent feedback and policy review by the top campus administrators will lead to trust and vitiate fears that the agreement will be a central office tool eliminating local autonomy. Finally, by involving the local campuses, it is unlikely that a local campus would succeed in disowning the agreement. To achieve the above goals, the table team representative must not be an errand boy but must be a high level administrator with credibility and power at the local level.

Particularly for a first contract, one member of the team should serve as a resource person on academic matters. A logical person would be the vice president for academic affairs. The academic representative will understand the short-term and long-term implications of workload provisions. This person will serve as the resource person for governance issues. This individual should have statistics on the use of part-timers by campus and discipline. The academic representative should periodically meet with counterparts from the other campuses and review with them all proposals with academic implications. Without this input a minor language provision could cost a campus thousands of dollars, or could replace a workable practice with a nightmare.

The team should include a financial expert. This person is responsible for analyzing the cost impact of collective bargaining proposals. He or she should provide frequent, revised cost analyses and should have the raw data to be able to cost out proposals on short notice. This person serves as the bargaining liaison with the campus vice presidents of fiscal affairs. If this is a public college system, this person is responsible for ensuring that the state and the college system are using the same set of payroll figures and have a common understanding of what one percentage equals in bargaining unit base payroll. In this way there will be no surprises when the external budget personnel must approve the final settlement.

USE OF A PROFESSIONAL LABOR NEGOTIATOR

Labor negotiations require skill and knowledge. It is unlikely that an inexperienced layperson can effectively negotiate a first labor contract. Use of a professional labor negotiator will probably result in a lower cost package and will establish a sound labor relations foundation.

A skilled labor negotiator is able to structure the minimum cost package that will satisfy the union's minimal settlement needs. The professional, through experience, has acquired a sense of timing and knows when increasing an offer would be throwing money down the drain and when it would result in a peaceful settlement. The professional understands the cost and procedures involved in options available at different times in negotiations, thereby increasing the political choices available to the board.

More important than the cost of the final settlement is the question of managerial rights. If the board decides to maintain the collegial model, a professional negotiator will preserve managerial flexibility through contract language if the union becomes uncooperative and militant. The professional negotiator understands the distinction between consultation and decision-making.

Management will have to pay dearly to recover in subsequent negotiations language mistakes it has included in the first agreement. The union may be willing to soften its economic demands in exchange for language concessions. Giving too much too soon can create long-term labor relations problems.

A professional labor negotiator understands when and how to agree to a proposal. Slight rewording of a union proposal can satisfy management's needs without destroying its acceptability to the union.

Most union leaders prefer dealing with a professional negotiator. The issues are narrowed and the battles are fought over major substantive issues rather than theoretical issues. A professional labor negotiator probably has had previous dealings with the particular union that can be helpful in the instant negotiations.

A professional labor negotiator will know the appropriate questions to ask. This skill will enable the parties to develop an understanding of the key to the union proposals, which could be hidden in the specific language, and in clarifying any misunderstandings as to local practices. A professional negotiator can frame contract language that addresses the union's concerns without granting broader language than is necessary to resolve the issue. A professional labor negotiator can help the board develop realistic goals for collective bargaining and a strategy and timetable to achieve these goals.

Finding the right labor negotiator takes considerable time and effort. The ideal labor negotiator should be familiar with public and private sector labor relations law and practice and knowledgeable about public administration and finance. The negotiator must have direct negotiating experience with higher education faculty units. The negotiator should understand the local system of governance and the higher education consultation procedures. The experienced labor lawyer from the private or municipal sectors may be totally unfamiliar with higher education and its peculiarities. The college system's counsel may be familiar with state law and higher education issues, such as academic freedom, but totally unfamiliar with labor relations law and practice.

Some college and university systems hire their own in-house labor relations directors with staff, while others use outside labor counsel to negotiate the collective bargaining agreement. Whichever approach is taken, the use of a professional labor relations person will assist in limiting labor costs and preserving managerial rights and flexibility.

COLLECTING DATA FOR COLLECTIVE BARGAINING

A key to successful collective bargaining is assembling the information that will be needed at the bargaining table. Some of the information will relate to how the faculty's salary, fringe benefits, and working conditions compare to those of faculty at state and private institutions. The personnel directors at comparable systems and the state board of higher education may have wage and salary survey data.

Other sources include the following:

1. Every year the College and University Personnel Association publishes a national survey of faculty salaries by discipline and rank.

2. Each summer the American Association of University Professors publishes a national salary survey.

3. The Academic Collective Bargaining Information Service (ACBIS), 724 Ninth Street N.W., Suite 210, Washington, D.C. 20001 (202-727-2903), has a wealth of bargaining information. The monthly *Fact Sheet* contains settlement information, wage and salary comparisons, arbitration awards, court decisions, and other information pertinent to higher education bargaining. A complimentary list of publications can be obtained by writing to the above address.

4. The National Center for the Study of Collective Bargaining in Higher Education and the Professions maintains an extensive contract library, conducts workshops on collective bargaining, and distributes collective bargaining data. The Center is at Baruch College, City University of New York, 17 Lexington Ave., New York, NY 10010, (212) 725-3390.

5. Area wage surveys are prepared by the Bureau of Labor Statistics of the U.S. Department of Labor.

The following in-house information will need to be obtained:

1. A distribution chart showing the number of faculty by rank, step within rank, and time spent in rank. This information is needed to cost out all salary proposals. Compiling, coordinating, and verifying this data is tedious. Access to a computer would facilitate the process.

2. A length-of-service distribution chart by institution and department. This information is necessary for analyzing reduction in force possibilities, for evaluating turnover problems, and for determining the cost of certain proposals.

3. An employee age distribution chart. This information is helpful in projecting retirement and in designing early retirement incentive plans.

4. A comprehensive list of all written personnel policies, regulations, and written communications governing conditions of employment.

5. All written documents, including senate constitutions by-laws, and regulations, relating to faculty at the local institutions.

6. A breakdown by department and rank of full-time and part-time faculty.

7. A breakdown by department of approximate class sizes for the previous fall and spring semester.

8. A breakdown by rank of degrees held by faculty.

9. A list of prevailing local practices regarding work load.

All of the above information is needed for management to understand the system-wide and local implications of a union proposal. Because personnel and workload practices vary by campus, these inconsistencies must be resolved prior to agreement or accommodated in the collective bargaining agreement.

After the negotiating team has been selected, the information has been gathered, the policy issues have been decided, and the proposals have been prepared, management is ready to meet the challenge of negotiating with the union.

ENDNOTES

1. If the AAUP is involved, the negotiatng team must familiarize itself with the AAUP publication entitled "Policy Documents and Reports" (AAUP Washington, D.C., 1977) frequently referred to as the "Red Book".

The Importance of Setting Bargaining Objectives

By Gary W. Wulf

In 1975 the New Hampshire legislature enacted a Public Employee Labor Relations Act. It was patterned roughly after the national labor law. The gun had sounded. During the next eight years the University System of New Hampshire faced unions in elections 13 times. At the high-water mark of unionism in New Hampshire, 18 percent of the faculty and staff were under contract. Today only 4 percent remain in a union. A review of the 13 elections shows unions winning in four elections. In three cases the results ended in union decertification. The results were no accident. Nor were they a matter of casual or neutral management decisions regarding the effects of unionism.

The Board of Trustees of the University System of New Hampshire in 1976 passed by a 19-1 vote the following resolution:

> The Board of Trustees of the University System of New Hampshire wish to reaffirm the sense of responsibility they feel regarding the faculty and staff of the campuses of the University System. The Trustees realize that to a great degree the University System *is* its faculty and staff. Only through equitable, fair and appropriate treatment of individuals regarding salaries, benefits, and personnel policies can a healthy environment for learning be maintained. The Trustees intend to do everything within their power to maintain an environment that provides for a quality education.
>
> It is the opinion of the Board that collective bargaining and the presence of a third party is not necessary for equitable treatment of the faculty and staff and, consequently, the maintenance of a healthy environment for learning. On the contrary, collective bargaining could complicate relationships thus making operations with collective bargaining as an element, based upon the experience of others, more cumbersome and expensive. While the Trustees would agree that the right to organize is indisputably available to the faculty and staff of the University System, they feel they would be remiss not to comment as to its advisability. It is their firm position that collective bargaining at this time would be counter-productive.

Through the years this resolution was the cornerstone for strategy regarding elections and was a key influence in negotiations with unions. From it a series of principles evolved. All can reasonably be categorized as bargaining objectives. They are as follows:

1. Never enter negotiations without clear parameters. These parameters should never afford a union member a right or privilege not enjoyed by non-union faculty or staff. Monetary settlements should reflect parity with non-union compensation or may be less.

2. Management should always enter negotiations with a set of management demands. These demands should be aimed at problem solving. They should be real and they should be aimed at reinforcing the administrative prerogatives that are essential to maintaining the quality and financial flexibility of the institution. As an example, no contract should be negotiated without a portion of the compensation improvement being tied to "merit" and no staff contract should be negotiated without the right to sub-contract.

3. Avoid the defensive position. Management should prescribe the balance of issues. The union should be placed in the position of defending what they have achieved, least of which is their right to continue to represent the people for whom they

purport to speak. Since the name of the game is bargaining, unions should be required to concede real rights or privileges in exchange for their gains, not simply to drop their own demands.

4. Where management has objectives that are essential, no agreement should be reached until some degree of success is reached on those issues. For example, one contract negotiation with a staff unit at the University of New Hampshire plodded along for more than a year over the issue of the union being required to negotiate from zero benefits applicable to their membership, even though a comprehensive benefit program existed for those same employees prior to unionism. The unit was decertified prior to agreement.

5. Timing of the development of the management demand package should be geared to the most advantageous balance against union demands and the calendar as possible. The receipt of union demands and the response to such should be coordinated with the overall objectives of the negotiation. If management is setting the pace for negotiations, they should never be in a position of having to settle.

6. Bargaining goals should be specific rather than general. If it is necessary to correct abuse of a sick leave benefit, then the union should be apprised of that fact. If a benefits cap is essential to achieve this end, then the contract language should contain a specific limit to which the institution is willing to negotiate in order to solve the problem. Objective facts should be used to support arguments. Dollar expenditures compared with those of other colleges and universities are more convincing than emotional sermons. Every management objective should be approached with the same data support as you would have available in mediation or fact-finding.

These principles seem basic. They are. It is often forgotten that collective bargaining is a fundamental exercise. It is the obvious that we often overlook in our desire for sophistication and enhancement.

DEVELOPING BARGAINING OBJECTIVES

The development of bargaining objectives can't be accomplished by an individual or a bargaining team. Nor can they be achieved by a single chief negotiator. It takes a coordinated effort by the entire management hierarchy to win in collective bargaining. For example, in New Hampshire the management followed these general guidelines.

- Work with a wide variety of managers and administrators in developing management demands. Collect ideas from every level of the organization and translate them into problem-solving contract language. It's a good idea to ask your advisors to jot these thoughts down throughout the entire contract period or to spend some months prior to negotiations doing so. It will prove more effective than asking managers once every year or two, "What problems have you experienced that you'd like us to solve at the negotiating table?"

- If you're going to achieve any of your bargaining goals, you must maintain confidentiality regarding them until they are presented at the table. Even more important the relative importance of management's objectives and the ultimate bottom-line must be a perfectly guarded secret. We require that any person with knowledge of such facts, including trustees, take a theoretical pledge not to divulge to anyone even the slightest detail of the bargaining objectives.

- It may be necessary to introduce a few diversionary items into the package to achieve the real management objectives. These decoys must appear to be just as real as true objectives. Certainly all the objective support and rationale should exist for them as it does for the more important demands. It's also a good idea to avoid demanding anything that you would not be comfortable in accepting. The union could serve you decoy for dinner.

- Strive for a list of bargaining objectives that represent a package of relative weight when compared to the union demands. This may require either anticipating the union's demands or delaying the final development of the management demand package until after the demands from the union have been received. If there are 52 cards in the game, you want to be able to play at least 27 of them. When the name of the game is bargaining it's essential to have more to trade than the other party.

- A step that is often omitted is the securing of support for the management bargaining objectives from the chief executive officers and the board of trustees. They should be able to pick out the decoys from the flock and also to hold their ground in support of the real objective. They too must take the pledge.

- The entire package of management objectives should have the stamp of approval from the affirmative action officer. It may be wise to provide that individual with an opportunity to suggest specific objectives for the package. Affirmative action and equal employment opportunity problems are certainly legitimate matters for negotiations. The traditional union seniority and bumping-rights philosophies often create significant barriers in this area.

Assume the critical process of development the management objectives has been completed. All the preparation and planning has been accomplished. It's now time to divulge the contents of the package to the additional key administrators and managers of the institution. If this can be done before delivering the package to the union it serves as an off-Broadway engagement. You may polish the script or even rewrite it if the first reviews are not what you expect. Until now it's been a creative process. Now our attention shifts to communication.

COMMUNICATING BARGAINING OBJECTIVES

There are a variety of reasons why it is important to communicate bargaining objectives to the management team. The most obvious is understanding, but since the demands management places on the table came from the administrators themselves, that should help in explaining the demands.

If I had to select, in priority order, the purposes for which we have communicated our bargaining objectives to the Board of Trustees and key administrators, before and during negotiations within the University System of New Hampshire, I would rank them as:

1. To reinforce the negotiating team's position at the table.
2. To provide progress reports.
3. To test the judgment of the negotiating team regarding the value of concessions and gains.
4. To educate.

A negotiating team needs the unanimous support of the management team, that means all key administrators and the board of trustees, if it is to succeed in hard-nosed negotiations. To achieve this cohesiveness and strength, managers and administrators must feel the negotiating team represents them at the table. This will not happen unless they have detailed information regarding the objectives, strategy, and outcomes of negotiations. One word of caution, however, is necessary: You can generate fanatical support. It is disastrous if your supporters become so enthralled with the management bargaining objectives that they lose sight of the realities of negotiations. There are achievements short of full attainment of an objective, and sometimes losses (concessions) are made to achieve an end. Foster support with the management team, but not to the point of inflexibility.

Designate some liaison persons from the negotiating team who will provide progress reports to various management constituencies during the course of negotiations. Such persons report on wins and losses as they take place. They also acquaint the broader management team with issues still on the table. It may be necessary to prepare for some type of confrontation or end-run by the union. On occasion, our liaison person to the Board has alerted them to the likelihood of direct contact, public demonstrations, and hostility at an open Board meeting. It is amazing how well such dysfunctional happenings can be resolved if people are prepared for them.

There are times when a negotiating team loses perspective on issues or perhaps just wishes to test their judgment with the larger administrative team. That is when communication is essential. Verifying your position is sometimes far better than forging ahead. Once a concession is granted, there is no getting it back.

Since only a few are at the table, the negotiating team must acquaint the larger management body with the nuances of collective bargaining. The nonparticipant in the negotiating process is unaware that often it is what is not a part of the contract that represents the major achievement. I remember well the feeling of frustration when a final contract was being reviewed by a chief executive officer and the reaction was, "It took you 18 months to negotiate a contract that is only 63 pages long!" It would have taken far less time to negotiate a 100-page agreement and no time at all to negotiate a 200-page agreement.

There are even rare instances when a management concession must be made to achieve the non-inclusion of a more onerous union demand. The casual reader of the final agreement is unaware that the giving of certain concessions actually is the attainment of goals. Only through a conscientious program of communicating initial bargaining objectives and frequent updating of the board and key administrators can you hope to achieve the degree of understanding necessary to receive a knowledgeable approval of the final agreement.

ORGANIZING TO ACHIEVE THE BARGAINING OBJECTIVES

The achieving of bargaining objectives is not all principles and theory. Much of what it takes to get the job done at the negotiating table involves basic organization and planning. The rudimentary elements of the process are:

1. the chief negotiator.
2. the negotiating team.
3. the negotiating climate or posturing.
4. a power base from which to negotiate.
5. a barrier to negate the likelihood of an "end-run."
6. timing and strategy.
7. resource materials and resource persons.

The University of New Hampshire Board of Trustees have elected to hire outside negotiators to represent them in negotiations. It is their opinion that too much aniomosity develops in negotiations to permit a permanent staff person to both negotiate the agreement and administer it following settlement. It can certainly be argued that hiring your own chief negotiator is more cost-effective. It is not essential that the chief negotiator be an attorney; an experienced negotiator may be more effective. In the event an attorney is not used, a specialized labor counsel should be available for advice when the tough legal questions come along.

The chief negotiator must be the single spokesperson for the board. All correspondence relating to negotiations must be through the chief negotiator. It may be beneficial also to have only the chief negotiator speak at the negotiating table. All that can be done to enhance the authority of the chief negtiator should be explored. The chief negotiator should be the lightning rod and the captain of the team at the bargaining table. Only through singular and clear signals to the union will the results of the negotiations be manageable.

The negotiating team should comprise as small a number of persons as possible. It must provide enough breadth however, to give credibility to the entourage. All major operational viewpoints should be represented. The negotiating team constitutes the eyes and ears of the chief negotiator. It is present to ensure that the chief negotiator is aware of all that is occurring in and behind negotiations. There is sometimes a need for the negotiating team to reinforce the bargaining objectives for the chief negotiator. The desire for settlement or the tedium of the process may cloud the judgment of even the best management spokesperson. Just as a football team needs a quarterback and solid support at the other positions, so must the negotiating team contain a signal caller and a variety of others to perform other vital functions necessary to achieve success.

The negotiating climate should be directed by the management organization. It has often been said that collective bargaining consists mainly of posturing or seeking the proper mood of atmosphere to accomplish the desired results. That may be more true than many would like to admit. It cannot be denied that the added complexity of moods, behavior, and emotion can and does play an important part in facilitating favorable results. The master of the process will intellectually decide what mix of these ingredients best combine with the objective elements of the bargaining process to achieve bargaining objectives.

The management negotiating team should establish a firm power base from which to bargain. This can be accomplished by achieving full support for the bargaining objectives they intend to promulgate during the period of negotiations. Chief executive officers and the board of trustees should pledge unalterable commitment to the management demand package. Only when the management negotiating team informs them of a change in position, generally required to achieve agreement on the most important issues, should that pledge be modified. In New Hampshire, with a board consisting of 25 persons, Board commitment is obtained by a delegation of the full authority of the Board from the full Board to a select Employee Relations Committee. This Committee consists of the Chair of the Board, the Chief Executive Officer of the System (Chancellor), and the chairman of the Personnel Committee of the Board. The Committee is chaired by a member of the Board with primary concern for labor relations. This group represents the strength from which the management negotiating team derives its authority to speak without fear of contradiction.

Experience has proven that unions, when confronted with the frustration of being unable to move a management negotiating team to achieve their goals, will try to go around them. This is commonly known as the "end run." Unions will try to approach the board of trustees, students, alumni, political officials, the general public, or anyone else they feel will assist them in softening the management position. The best safeguard against this tactic by unions is to insist at the onset of negotiations that all communications relating to negotiations be through the chief negotiators and further that there is to be no release to the media or other groups unless the parties are at impasse. This has been a consistent ingredient in our ground rules. On one occasion it was necessary to file an unfair labor practice charge against a union that went public in order to discredit the management negotiating team. With the ground rule already mentioned as a key exhibit the Public Employee Labor Relations Board found the union to be guilty of the charged unfair labor practice. There have been no further end runs by that union.

One of the most important and yet intangible factors involved in achieving bargaining objectives is timing. No single element in negotiations seems to influence happenings more dramatically than the clock and the calendar. Each contract has its own pace geared to the calendar. Often each session has its own rhythm coordinated with the clock. The best advice that can be given when it comes to timing is: be ever sensitive to it, manage it to your advantage, and remember the union needs the contract, generally you don't. The expiration date is their deadline. Negotiate in good faith but don't be forced into the union's timetable.

Every negotiations session should be approached as if you were presenting your proposals to a third party mediator or factfinder. Remember, the union at best considers the management team as the opposition. There may also be problems of distrust and animosity. If the bargaining objectives of management are to be taken seriously by the union, they must be supported by exhibits, resource materials, and in some cases resource persons who join the management team for purposes of fortifying the arguments for certain proposals. Groundrules should provide for the addition of resource persons as required. A resource person should be an expert witness who, if possible, is viewed as a third party by the union. Remember, the facts will have little impact if they are viewed as mere management proposals.

CONCLUSION

Our experience in New Hampshire has proven, at least to us, that bargaining objectives can be achieved. Consistent success at the negotiating table by management gradually weakens the union's ability to command the respect and support of their membership. Eventually that can lead to decertification. A faculty or staff member must accept the fact that management is better able to achieve for them favorable wages, hours, and working conditions and that a third-party representative only causes a diminishing of those rights or privileges. The ultimate bargaining objective should be the elimination of the need for such a process to accomplish a fair and equitable employee-management relationship. It is attainable; however, it takes a careful and persistent dedication to the striving for this goal.

REFERENCES

Angell, George W.; Edward P. Kelly, Jr., and Associates. *Handbook of Faculty Bargaining.* (Washington: Jossey-Bass, 1977).

Birnbaum, Robert. *Creative Academic Bargaining: Managing Conflict in the Unionized College or University.* (New York: Teachers College Press, Columbia University, 1980).

Gemmell, James. *Collective Bargaining: A View from the Presidency,* Orientation Paper No. 6. (Washington, DC: Academic Collective Bargaining Information Service).

Labor Management Relations Issues in State and Local Governments, Issue No. 3. (Washington, DC: U.S. Government Printing Office, 1977).

Polowy, Carolyn I., J.D. *Collective Bargaining and Discrimination Issues in Higher Education,* Monograph No. 1. (Washington, DC: Academic Collective Bargaining Information Service, August 1975).

"Some Suggested Advantages and Disadvantages of Collective Bargaining", Special Report No. 1, rev. (Washington, DC: Academic Collective Bargaining Information Service, October 1974).

The Art of Negotiating Newsletter, vol. 1 no. 4. (New York: ______, January 1981).

Strike Management in Higher Education

By Gregory L. Kramp

Strikes and other forms of work stoppages are just as undesirable in institutions of higher education as they are in public agencies or private enterprise. Strikes will continue to occur at universities across the country, however, regardless of the perceived legality or illegality of such strikes. With careful preparation and advance planning, higher education management can continue to operate essential services, fulfill the teaching and research missions, and attain desired objectives through negotiations.

UCLA is one of nine campuses in the University of California system. With more than 33,000 full-time students, UCLA is the largest of the UC campuses. There are currently 3,000 faculty and other teaching staff at UCLA. The non-academic staff personnel total 16,500 employees. Of these, approximately 4,000 work in the UCLA Medical Center in direct support of patients in the 715-bed facility. Another 1,200 work in the adjacent Neuropsychiatric Institute in support of those patients. Most of the remaining 11,300 employees work in the 200 departments on the UCLA campus and in the professional schools adjacent to the UCLA Medical Center.

The International Union of Operating Engineers (IUOE), Local 501, AFL-CIO, has been representing operating engineers on the UCLA campus since about 1938. The UCLA Facilities Division employs 75 steam operating engineers. These steam operating engineers, most of whom are members of Local 501, went on strike in 1969 and again in May, 1977 due to disputes over wage increases. As of June, 1983, Local 501 is not certified as the exclusive representative of not only the steam operating engineers, but also an additional 250 skilled crafts and semi-skilled building maintenance workers.

MANAGEMENT PHILOSOPHY

Management must decide at the outset of a work stoppage what its stance will be during the strike. One thing unions count on is the tendency of management, especially in public agencies and in institutions of higher education, to give in to political pressures and make major concessions to avoid or settle a strike. Unfortunately, the pattern of last-minute major concessions creates serious credibility problems for negotiators in subsequent negotiations.

PLANNING AND PREPARATION

Probably the single most important factor in management's ability to successfully withstand a work stoppage or strike is careful planning and preparation prior to a concerted action by employees. Preparation and regular periodic review of an emergency operations plan and work stoppage or strike policy and procedure is essential to managerial success. The potentially affected operating departments must have a carefully thought-out plan for continuing their operations throughout the work stoppage. A careful, well-prepared, and well-publicized plan also may help to prevent the strike, since the union will know about management's preparations in advance.

OPERATIONAL CONCERNS

If the University is unable to continue operations, top management and the negotiating team must know this as soon as possible during negotiations and before the lines of battle are drawn. For example, during the last strike at UCLA in 1977, an operational crisis occurred right at the outset of the strike. The strike involved approximately 300 skilled crafts employees represented by the International Union of Operating Engineers, Local 501, AFL-CIO, and the Teamsters Union, Local 911. On July 26, 1977, which was the hottest day of the year (98°F) and was a day when the patient census at the Medical Center was highest (91 percent of capacity), nearly all of the skilled trade workers walked off the job. Due to inadequate security measures, considerable sabotage occurred, which severely affected the operation of air conditioning and heating systems in the UCLA Medical Center. In addition, someone succeeded in taking the system plans from the supervisor's office. The remaining supervisors and managers worked around the clock to restore heating and cooling throughout the Medical Center. Fortunately, within 24 hours systems were once again operational. Otherwise, patients would have been transferred to other hospitals, and management's bargaining positions would have quickly and dramatically changed.

Once the initial operational crisis was overcome, the management negotiators were informed and proceeded to take a firm position throughout the remainder of the negotiations. The Emergency Operating Plan continued to be successfully implemented for the remaining three weeks of the strike. Since 1977, the process of planning and preparing for possible strikes in the UCLA Facilities Division (Physical Plant) has not only been an effective deterrent to the actual occurence of strikes, but has also been valuable for managers and supervisors in increasing their specific knowledge of Facilities Division systems.

LEGAL CONSIDERATIONS

Other administrative actions that will increase the likelihood of managerial success include an evaluation of the university's legal position. Even though the legal process is time-consuming and costly, it is probably worthwhile to consider seeking a temporary restraining order (T.R.O.) and other forms of injunctive relief. In California, the courts have not been hesitant to enjoin public higher education employee work stoppages as unlawful and unprotected activity. While some experts in labor relations argue that seeking injunctive relief only exacerbates an already tense situation, from a management perspective the legal remedies are a useful tool for applying direct pressure on the union and its leaders. This is especially true if the strike goes on long enough to obtain a permanent injunction and subsequent contempt of court citations. The injunctions, contempt citations, and lawsuits for property damages during a strike are among the most effective means available to management to maintain the offensive and directly put pressure on the union as an organization. Certainly, indirect pressure on the union is applied when the employees do not receive their regularly scheduled paychecks after the strike begins.

COMMUNICATIONS

In addition to the operational and legal considerations, it is extremely important that management establish and maintain fast and effective internal and external communications. Internal communications with striking and nonstriking employees must be promptly drafted and distributed. Such communications must be clear, direct, and concise, and must explain management's reasons for its positions. In writing such memoranda, it is critical that the writer place himself or herself in the position of the recipients both as employees and union leaders, and ask some important questions:

1. Do I understand all of the jargon used by management?

2. Is management simply feeding employees more rhetoric?

3. Is management's position fair and reasonable: To strikers? To non-strikers? Toward the union?

It is important that management avoid one serious pitfall: lengthy review of draft memos or letters by several parties. Time is indeed of the essence. The typical university committee review approach must be abandoned to ensure timely communication on important issues.

Management must also improve its public relations posture before and during any strike. In the case of public institutions of higher education, it is critical that the public and the politicians understand and support management's position in negotiations. If patients' lives are threatened as a result of the strike, or critical public services are curtailed, strong public sentiment can be generated that can also apply pressure on the union to settle on management's terms. With respect to private institutions of higher education, it is also important that public understanding and sympathy be developed to strengthen management's position. Needless to say, positive, cooperative relationships with the newspaper and television/radio media representatives can be of invaluable assistance in seeing that management's story is told factually, promptly, and effectively.

ADMINISTRATIVE RESPONSIBILITIES

It is also important that management ensure the thorough performance of daily administrative tasks during the strike. These administrative duties include a daily review of those employees who are at work or not reporting to work (especially in striking job classifications); maintaining logs, tape recordings and pictures of significant events (time, date, place, what occurred, who was involved) - this may be especially important in support of lawsuits for damages; and checking regularly the number and location of pickets, as well as picket-line activities. In addition, all subcontractors and vendors must be notified of the strike, and arrangements must be made for delivery of critical supplies.

The accounting and payroll departments must arrange to pay strikers all due wages, except vacation and sick leave balances, immediately after the beginning of the strike. Procedures must also be established to account for property damages and losses as a result of the strike, so that the damages may be quickly ascertained in the event of a future lawsuit. Prompt action must be taken to ensure the payment of overtime to nonstriking employees who are non-exempt.

NEGOTIATIONS

Management should establish a positive, cooperative relationship with the mediator. If the services of a mediator from the Federal Mediation and Conciliation Service (FMCS) or State Conciliation Service (SCS) were not used prior to the strike, those agencies should be contacted immediately. Management representatives should indicate to the union, mediator, and management bargaining team members its willingness to resume negotiations at any time, provided that the union revises its demands. The university must also make it clear, however, that its final position is a firm one.

STRIKE SETTLEMENT

Strike settlement agreements must be written, preferably in the form of a memorandum of understanding, to cover all aspects of the terms of settlement. Part or all of the points addressed in the memorandum will later be incorporated into the contract. Therefore, in addition to the terms of settlement on bargaining economic or non-economic issues, any agreements concerning the following points must be specified:

1. Terms of reinstatement for striking employees.
2. Seniority and status of employees who did not strike.
3. Status of replacement employees hired during the strike.
4. Status of striking employees who may have been disciplined or discharged during the strike.
5. Intended disposition of court suits filed during the strike.
6. Language to preclude the initiation of grievances arising from strike actions or activities.
7. Effective date that insurance coverages will resume, and on what basis.
8. Retroactivity - specify any and all items or issues for which retroactivity is granted.

The objective of management must be to afford employees the means to return to work as quickly and as normally as possible following the settlement of the strike. This means that the employees must be welcomed back and the way paved for establishing harmonious relations as rapidly as humanly possible.

Management must not engage in arguments about the strike, and should minimize the effect of any hostilities that are present. Managers and supervisors must be listening for personal problems that the strike may have generated and be readily available to counsel individuals who request assistance.

Supervisors should schedule work so as to ensure minimal down-time and thus provide little opportunity for congregating and discussion among employees.

The university's problems are not over when the strike is settled. By doing its best to restore harmonious relations with employees, however, the university can return to full operations much more quickly.

In conclusion, it is important that affected managers remain calm and do not overreact in the first hours and days of the work stoppage. By adhering to a carefully drafted plan, management can successfully withstand the economic assault and prevail in negotiations.

REFERENCES

Allen, Matthew A., et al. *The Anatomy of a Strike.* Presentation to League of California Cities, Fifteenth Annual Labor Relations Institute, (January 21, 1981), San Francisco, CA.

Gorman, Robert A. *Basic Text on Labor Law: Unionization and Collective Bargaining.* St. Paul MN: West Publishing Co., 1977.

Loomis, John M., and Robert W. Mulcahy. "Strikes: Strategy and Tactics." *Employee Relations Law Journal.* Vol. 8 No. 4 (Spring 1983) 618-647.

Paterson, Lee T., and John Liebert. *Management Strike Handbook.* Chicago, IL: International Personnel Managers Association, 1974.

THE UNIVERSITY OF CALIFORNIA, LOS ANGELES
POLICY AND PROCEDURE CONCERNING WORK STOPPAGE

1. General

To facilitate effective and orderly handling of any actual or potential disruption resulting from a Staff Employee Work-Stoppage, a Task Force, appointed by the Vice Chancellor - Administration, has been established. The Task Force is generally responsible for initiating, coordinating, and reviewing all processes incident to resolving problem situations. The Task Force consists of the following administrators or their designates:

A. Vice Chancellor - Administration

B. Vice Chancellor - Student and Campus Affairs

C. Assistant Vice Chancellor - Staff Personnel (Committee Coordinator)

D. Assistant Vice Chancellor - Facilities

E. Assistant Vice Chancellor - Campus Affairs

F. Director of Public Information

G. Chief of Police

H. Environmental Health & Safety Officer

I. Assistant Chancellor - Legal Coordinator

J. Assistant Chancellor - Center for Health Sciences

2. Responsibility

A. Work-Stoppage Task Force

The Task Force is primarily responsible for reviewing reports of the Assistant Vice Chancellor - Staff Personnel and for determining the most reasonable course of action to resolve conflicts with a minimum of disruption to the University. The Task Force will also direct the following specific assignments as deemed necessary:

1. Contact with Employee Organizations
2. Contact with Central Labor Council or other applicable Central Body
3. Liaison with President's Office
4. Liaison with General Counsel's Office
5. Liaison with Police
6. Liaison with News Media (Director of Public Information)
7. Dissemination of Information to Employees (Assistant Vice Chancellor - Staff Personnel)
8. Dissemination of Information to employees participating in work-stoppage (Assistant Vice Chancellor - Staff Personnel)
9. Dissemination of Information to Students (Vice Chancellor - Student and Campus Affairs)
10. Liaison with Faculty (Resource Advisor [Faculty] through Chancellor's Office)

B. Assistant Vice Chancellor - Staff Personnel

The Assistant Vice Chancellor - Staff Personnel has the primary responsibility for determining the need to activate the Task Force. As Coordinator of the Task Force, he is responsible for ensuring that all relevant information is made available and for initiating actions determined appropriate by the Task Force. The Assistant Vice Chancellor - Staff Personnel is directly responsible for contact with the President's Office and General Counsel as required. In addition, the Assistant Vice Chancellor - Staff Personnel ensures that all appropriate records and files are maintained.

3. Task Force: Steps Toward Activation

In the event of a work stoppage or potential strike involving employees of UCLA, the Department Head(s) of the affected department(s) shall contact the Assistant Vice Chancellor - Staff Personnel. In investigating a disruption, the Assistant Vice Chancellor - Staff Personnel should determine details to the fullest extent that are available, including the alleged reasons, nature of the work stoppage, group(s) involved, extent of employee and other individuals' involvement and the effect of the activities on the department(s). Based on this information, the Assistant Vice Chancellor - Staff Personnel makes the decision on the need for convening the Task Force.

4. Maintenance of Essential and Desired Services

In the event of a disruption and/or withholding of services by employees, the UCLA Administration will attempt to maintain all essential services and, to the fullest extent possible, those services normally desired. To ensure this, the Task Force will make recommendations through appropriate administrative units for appropriate action. The Task Force will specifically consider the following major areas:

A. Facilities - to maintain facilities and related essential services

B. Hospital Administration - to ensure patient safety

C. Police Department - to ensure employee, student, faculty, and public safety

D. Purchasing Department - to ensure delivery of essential matterials to campus

E. Coordinator of Campus Emergency Plan (Campus Fire Marshal) - should any disruption appear to represent a potential general campus emergency

5. Work Stoppage Task Force Checklist: Operation of Department(s)

To assist the Task Force in systematic implementation of effort to maintain essential and desired services, the following operational checklist will be utilized. Responsibility for completing the various actions required on the checklist will be assigned to the Task Force. The Assistant Vice Chancellor - Staff Personnel will have responsibility of coordinating completion of the checklist and reporting any problems to the Task Force.

A. Develop Plan for Operation

1. Determine the location of work stoppage/strike headquarters.

2. Determine whether operations will be continued, and if so, for how long.

3. Determine which jobs are essential.

4. Establish work priorities, and determine how to best handle the work backlog after the work stoppage to minimize overtime.

5. Determine deployment of non-participating employees and supervisors:

   a. Continue to employ non-participating employees productively. If operations are ceased, consider lay off of non-participating employees.

   b. Ensure that all non-participating employees are kept busy to avoid idleness and reduce verbal speculation and rumor.

   c. Since many employees will be working on different jobs, safety must be stressed.

6. Determine whether emergency replacement employees will be hired. If so, how will they be hired? On temporary status? Retired employees? Volunteers?

7. Determine whether assistance will be requested from other local public agencies.

B. Legal Considerations

1. Secure authorization from President's office instructing General Counsel to take all necessary legal action to prevent or terminate an employee work stoppage.

2. Determine whether a Temporary Restraining Order or Preliminary Injunction should be obtained.

3. If restraining order or injunction is obtained, notify employees and union leaders of the requirement to return to work.

4. Document such notification.

5. Take proper action to replace and/or terminate employees participating in work stoppage under state and federal law.

6. Know what the reinstatment rights and requirements are for replaced employees.

7. Over-extend yourselves to ensure fair and equal treatment for all individuals.

C. Communications

1. Advise all appropriate agencies and offices of the work stoppage.

2. Provide clear understanding of customary duties.

3. Ensure provable communication of required duty to employees. Encourage employees to return to work.

4. See that all employees understand risk of disciplinary action.

5. Ensure that all employees understand the issues and management's view.

6. Be certain that all employees understand the policy in regard to refusal to provide services.

7. Review and approve all public and employee communications for release by designated media spokesperson.

D. Evaluate Union Variables

1. Finance Resources - ability to support long work stoppage, also check eligibility of employees participating in work stoppage for welfare and food stamps.

2. Leaders - how strong are they?

3. Ability to change agency's position by community pressure?

4. Support of other unions.

5. Be prepared to handle issues such as reprisals against participating employees, withdrawal of legal actions and layoff of temporary replacements.

6. Consider withdrawal of union dues checkoff.

E. Administrative Duties

1. Maintain a Work Stoppage Log

   a. Document all significant events (time, date, place, what happened, who was involved).

   b. Maintain this log as accurately as possible and in a confidential manner for possible future legal actions. Pictures and/or tape recordings are to be referenced in the log.

2. Communicate, observe, and enforce (through law enforcement agencies, if necessary) the following:

   a. People working in or having any business with the University have a right to pass freely in and out of it.

   b. Pickets must not block a door, passageway, driveway, crosswalk, or other entrance or exit to any University facility.

   c. Profanity on streets and sidewalks is a violation of the law.

   d. University officials and law enforcement officers should make every effort to permit individuals and vehicles to move in and out of the campus in a normal manner.

   e. Union officials or pickets may not physically or verbally intimidate, threaten, or coerce people entering or leaving University facilities.

   f. Sound trucks should not be permitted to be unduly noisy. They must have a permit and must keep moving.

   g. If acts of violence or trespassing occur on University premises, campus officials should file complaints or seek injunctions. In cases of violence on one's person, the aggrieved person should sign a warrant for the arrest of the person or persons causing such violence.

   h. Fighting, assault, battery, violence, threats, or intimidation are not permissible under the law, nor is the carrying of knives, firearms, clubs, or other dangerous weapons.

3. Pay and Benefits

   a. Immediately arrange to pay employees participating in work stoppage any wages which are due.

   b. Discontinue the payment of fringe benefits, especially insurance and pension premiums, on a non-discriminatory basis.

   c. Do not pay vacation pay or sick leave pay.

   d. Review the files of employees currently drawing accident and sickness benefits, paying particular attention to the "expected" date of return to work for each employee so involved. Payments should cease on the "expected" date of return to work for each employee so involved. Payments should cease on the expected date unless additional medical statements verify a continuing disability.

4. Other Administrative Details
    a. Collect all keys, operation manuals, gate passes, etc.
    b. Protection against sabotage
        1. Alternate keys and locks
        2. Guard light switches and temperature controls
        3. Arrange for locksmith service
        4. Arrange for window repair

F. Things to Avoid

1. University officials should not do the following:
    a. Offer extra rewards to non-participating employees, and make statements that returning employees who participate in work stoppage will not have the same reward.
    b. Attempt to withhold any benefits from participating employees once the work stoppage has ended and some or all participating employees are reinstated.
    c. Threaten employees or those inividuals withholding services.
    d. Promise benefits to individuals or groups of participating employees in an attempt to end the work stoppage or undermine the union.
    e. Discharge non-participating employees who refuse to take over a participating employee's job.

"The Commandments" for Management Labor Negotiators

By John F. O'Hara

After many years and much experience in labor negotiations, I came to realize that there were certain basic rules that were used by the more successful management participants in the process. The Commandments that follow are an attempt to set forth these rules as I have learned them. Some would be applicable equally to any of the forms of negotiation in which each of us almost daily engages with our employers, fellow employees, spouses, children, friends, or other associates. Other of these Commandments, however, are peculiar to the negotiations that characterize collective bargaining and result from the many and varied pressures that affect those who participate.

I tried in vain to condense these rules into a form of "Ten Commandments"; however, any such designation would have been most presumptuous. Besides, that title was preempted long ago by the highest of authorities.

THE COMMANDMENTS

1. Thou shalt choose the bargaining team carefully, but there shall be only one spokesperson.
2. Thou shalt know well the members of the other team.
3. Thou shalt anticipate the issues.
4. Thou shalt not ask for what you already have.
5. Thou shalt say "No" from the beginning to any demand to which the ultimate answer is to be "No."
6. Thou shalt ask early for any important concession you hope to obtain.
7. Thou shalt not become angry unintentionally.
8. Thou shalt not engage in piece-meal negotiations.
9. Thou shalt attempt to trade little things for big things.
10. Thou shalt remember that the other fellow's face is tender.
11. Thou shalt keep open all channels of communication.
12. Thou shalt not agree to make a recommendation to management unless you know that the decision-maker will agree.
13. Thou shalt attempt to reduce to writing agreements reached during negotiations.
14. Thou shalt identify thy final offer and go no further.
15. Thou shalt not bluff and get thy bluff called.

PART THREE:

Mediation

The nature of collective bargaining is adversarial. Situations occur where the parties are unable to reach agreement. In such instances the services of an outside neutral may be warrented. In most cases, an outside neutral, or mediator, is a person whose function is to assist, not supplant, the parties and the process.

Summoning a mediator is very common in higher education collective bargaining. Yet, little has been written on how to prepare for mediation or what the mediator expects from the parties. Dr. Margaret K. Chandler examines mediation from the parties' point of view: the demands the process makes on them, the benefits they can derive, and actions that will make the process productive for them. Mr. Ira B. Lobel, Esq. discusses techniques of mediation from the mediator's point of view. The paper identifes the issues mediators consider when settling disputes.

Dispute Resolution: Making Effective Use of the Mediation Process

By Margaret K. Chandler

INTRODUCTION

The literature on mediation quite expectedly focuses on the mediator: his or her skills, talents, trials, and tribulations. The parties, union and management, are shadowy figures who sought help after a failed negotiation. When I mediate, my task totally concerns working with the parties. Real job satisfaction is experienced when the parties reach a settlement. The parties clearly are an important part of the process, yet I have been as guilty as any in focusing on what the mediator does rather on what the parties do. To correct this imbalance, I am going to bring the parties into the picture, to treat the mediation process at least in part, from their point of view.

While collective bargaining and mediation are the two most important institutions in our voluntary labor relations system, the mediation process is not well understood. Unlike fact-finding and interest arbitration, mediation does not follow set procedures. Moreover, the outcome is uncertain. It can be either success or failure. Fact-finding always produces a report, and interest arbitration, an award. There are complaints that the process takes too long and, although the success rate is 65 percent or better, in our increasingly risk-averse society, this figure may be judged too low.

Dissatisfied legislators are finding the stronger medicine of interest arbitration increasingly attractive, although this measure clearly takes the decision-making process out of the hands of the parties. Even unions, especially the weaker ones, are beginning to wonder if free-market collective bargaining, aided by mediation, is indeed cost-effective for them. On the other hand, our clogged and expensive court system has encouraged the use of mediation in other fields, such as divorce, community, and environmental issues.

Mediation is a useful institution, but if the users are to be satisfied, they must be able to understand and work with the process. Some aspects of mediation cannot be drastically changed, for instance, the time spent in face-to-face interaction. If the parties know how to work with a skilled mediator, however, the process can become less time-consuming and more productive. Effective mediation should work itself out of a given job. Repeat customers are not learning all that they should from the process.

THE GOALS OF MEDIATION

A first step involves understanding the goals of the process. Mediation is a supportive institution that serves to contain conflict in labor-management relations. Free, democratic societies favor voluntarism. When labor and management make their own agreements, they are strongly motivated to enforce them. The law requires that they bargain with one another in good faith, but although agreement is the goal, there is no compulsion to agree. In a small proportion of cases (15 to 20 percent) this rather fragile institution does not produce agreement, and an impasse is declared. If the institution is to be preserved, assistance must be provided at this point. Ideally, the help offered should not change the concept of self-government through collective bargaining. Mediation fulfills this requirement.

Mediation is a tool for unlocking impasses. A mediator is a third party interested in helping those at impasse to reach a settlement. The responsibility still rests with the parties. The decision is still theirs. The issues of quality and fairness are theirs to determine. The final settlement has to have appeal only to the extent that neither will reject its terms. Every mediator knows the satisfaction of going home late at night after an agreement has been concluded, experiencing the pleasure of seeing formerly divided and bitter parties shaking hands and smiling with relief.

The mediator's role is ambiguous at best. He or she serves the public interest in promoting peaceful labor relations but does not extend this public policy role by encouraging specific terms of agreement. In essence, a mediator does whatever is necessary to promote agreement in a particular situation. Most mediators prefer to think of themselves as activists in the process. They do not like the characterization that depicts a lackey who serves as a transmission line for offers and counteroffers. In truth, the mediator has to use good judgment to determine the degree of activism appropriate for each case and for the various stages of development within a given case.

Mediation is a flexible process and has available to it a large variety of tools. In extreme cases, especially when political problems prevail, the parties finally have asked me to sit down and write out my recommendations for a settlement. They then use the recommendation as the basis for moving toward agreement. At the other extreme there are easy cases wherein the parties actually are in agreement, but one or both need a facilitator-communicator to help them back away from strong positions taken in the heat of activity at the bargaining table.

The mediator does whatever is necessary to promote agreement, always working within the confines of a code of ethics that serves to protect the privacy of the process. The trust and confidence of the parties is a basic precondition for a successful outcome.

From the standpoint of the parties, the mediation process provides an attractive forum for continuing the private character of the bargaining relationship that existed before impasse. With the mediator's help, the parties still are working toward an agreement that they deem acceptable. Fact-finding and interest arbitration are formal procedures that stress the adversarial aspects of disputed matters. Mediation provides an informal approach actually better suited to resolving controversies whose outcome cannot be anticipated; e.g., there are no contractual provisions that serve as the basis for measuring the correctness of a decision, as in grievance arbitration. Mediation also encourages the full exchange of viewpoints and the consideration of alternative solutions to issues. The process may disclose new aspects or implications of problems and thus it has the potential for producing better agreements.

Succeeding sections will consider various aspects of the parties' participation in mediation, beginning with the decision regarding the proper time to enter the process.

WHEN SHOULD WE USE MEDIATION?

The consensus on this matter runs as follows: Do not be in too much of a hurry, but also do not wait too long.

Some have argued for early mediator involvement in troubled negotiations, claiming, among other things, that in the early stages the parties could work with the mediator to improve their negotiating process and possibly avoid an impasse. Early involvement, however, makes the mediator something other than a mediator. The mediator becomes a participant in the negotiations, a consultant of sorts. The use of a consultant to assist in negotiations is perfectly appropriate, but until an impasse is reached, there is no role for a mediator.

An impasse is reached when the parties have stopped making concessions even though agreement has not been realized. Movement toward settlement ceases. After several meetings in which no movement has taken place, resort to mediation may be advisable. This step should be taken only if the parties have devoted time in a number of negotiating sessions to sorting out the issues and identifying both sticking points and points of agreement. To function effectively, the mediator needs this information. Parties who simply read over the other side's proposal and reject it out of hand are not ready for mediation.

On the other hand, the decision should be made before the situation becomes ossified and interest in reaching agreement markedly declines. Mediation offers a new and different approach, best accepted while the parties are still oriented toward settling and while the need for third party assistance is strongly felt. I have successfully mediated contract disputes on the day after the beginning of a strike, but generally speaking, last minute pressures create a poor environment for mediation.

Electing to go to mediation can be taken as a signal that the parties are still willing to make concessions and to consider alternative approaches to problems. Mediators expect to work, however, with those who are unbending and inflexible. Of course, a mediator can do nothing for those who are completely unwilling to move. Still, the parties' current mindset should not be a determining factor in the decision to use the mediation process. Even the most obdurate may find a reason to move.

Parties sometimes resort to mediation as a bargaining tactic. A party may seek to prolong negotiations by participating in a mediation process that it will cause to fail. Some parties may enter into negotiations with the express intent of going to mediation so that they can blame the process for an overly generous or niggardly settlement. There are always those who will seek to use a process for their own purposes. However, mediation is designed for and used mainly by those who, after serious negotiations, have reached an impasse and are seeking aid in unlocking it before all momentum is lost.

WORKING WITH THE MEDIATOR

What the Mediator Needs from the Parties

Mediation provides a different and usually more effective relationship with a bargaining counterpart. The relationship with the mediator is a means to this end. Opportunities are created to make moves that are difficult in the setting of a failing or hostile relationship.

When I arrived at a mediation site, drenched after driving through a terrible rainstorm, one of the parties rose to greet me, saying, "We've been waiting for you to come here and work your magic." The words surely lifted my soggy spirits, but unfortunately, mediators have no magic. A skilled mediator has at his or her command a battery of tools, but for the process to be effective, much also depends on the ability of the parties to understand and to work with it.

The kind and quality of the information supplied to the mediator is critical:

1. Issues - most parties expect to provide the details of efforts at negotiation to date: a listing of the issues that have been tentatively settled and of those still unresolved. If an initial joint meeting is held, this information is often relayed at that time. Copies of the proposals and of any written modifications or tentative agreements will be provided.

2. Rationale - the parties have to be prepared to invest much more time in the enlightenment of the mediator. Questioning is one of the mediator's most effective tools. Mediators ask many questions designed to elicit an explanation of the significance and implications of specific issues and of the reasons for the stands being taken. Good negotiators see that they also benefit from this analytical exercise and realize the value of having the mediator convey their reasoning to the other side. These discusions with the mediator also help a chief negotiator dispose of the inevitable pet issues that have been elevated to matters of life and death.

3. Priorities - the mediator also asks questions aimed at gaining some notion of a party's real priorities concerning the issues. This information may be imparted indirectly to avoid compromising the position that "all of these items are critical". As soon as possible, the mediator wants to determine where the parties may be in covert agreement and where the real sticking points lie: the issues that have to be resolved if a settlement is to be reached.

4. Possible Concessions - the parties need to provide the mediator with some notion of where they may consider moving on the unresolved issues. This information concerning the degree of elasticity on various issues and proposed concessions is given to the mediator at various stages in the process. He or she holds this information for use when the time is right. The parties usually reveal their bottom-line positions toward the end of negotiations. In the meantime, if they have provided sufficient clues, the mediator will be able to make a reasonably good estimate.

With the needed information in hand, the mediator prepares to work toward a settlement. The primary tools are control of communication, concession-making, and language-packaging.

The parties are provided with:

1. Controlled Communication - apart from a possible joint meeting at the beginning, the parties work separately with the mediator who becomes the primary channel for communication. The process becomes less intense and more reliable as the parties begin to view one another through the eyes of an experienced neutral and to hear one another's positions as they are understood by that person. In some cases this may be the first time that a party has heard and comprehended the other side's arguments.

2. Concession Control - the parties gain the ability to have potential concessions held in abeyance by the mediator until he or she senses a productive moment: the other side is ready to receive them and reciprocation can be realized. If a party proposes a concession when its counterpart is not ready for it, it may be rejected as "an insult", etc. Moreover, the poorly timed concession offer may serve to raise the aspirations of the recipient and thus reduce the chances of reaching a settlement.

3. Packaging Aid - the mediator provides aid in putting together the final package. He or she organizes the issues into categories. After establishing priorities within each one, tradeoffs begin to emerge and then possible settlement packages. The mediator can hypothesize various versions to the two parties separately until he or she arrives at one that seems to meet the requirements of both sides.

The above discussion implies that the parties must enter mediation with some degree of flexibility. Frequently this does not seem to be the case. Believing mistakenly that a settlement was imminent, a party may have yielded its last available concession. Management may have already put its top wage offer on the table. To make matters worse, it may have sought to create good will by agreeing to a host of small items without getting anything in return. Working with the mediator provides an opportunity to restore needed flexibility by examining the problems behind specific proposals in order to find new solutions or by breaking a large issue into several smaller ones that can be dealt with separately.

Stages in the Relationship with the Mediator

In the initial phases of the relationship, the mediator asks questions and listens. The parties are provided with a welcome opportunity to vent frustrations. At this point, it is not difficult to deal with the mediator. An effective mediator, however, has to be more than a sympathetic friend. The parties must be prepared to be challenged. It is the mediator's job to move the parties from their entrenched positions.

Questions will be aimed at reducing the unrealistic expectations so characteristic of those at impasse. Parties who focus singlemindedly on their optimum goals are reminded that negotiation is a two-way affair: their real concern is what they can get given the constraints imposed by having to deal with the other party. The parties can expect the mediator to exert pressures for settlement. He or she will stress the negative consequences of pursuing the conflict by striking or going to fact-finding or interest arbitration. Chief negotiators may welcome this aid in bringing into line some of the more recalcitrant members of the bargaining team.

In working toward a final settlement, the parties inevitably will experience some tension in their relationship with the mediator. He or she explores with the parties ideas that involve modification of proposals, linking of proposals, proposed concessions and package deals, alternative solutions, etc. The parties understandably will not be enthralled by many of these suggestions, especially those that involve modifying a committed position on an item. It is tempting to reject the mediator's proposals almost immediately: "Nothing less than (our committed stand) will do"; "Without X, no settlement is possible." Mediators expect some intransigence from parties at impasse, but stone-walling does not serve the negotiation process well. In any negotiation, it is better to ask, "Why?" than to say, "No." A flat "no" cuts off the exploration of ideas that the mediator's proposal was designed to stimulate - the discovery of the alternate solution to a tough issue that both parties missed and on which both can agree.

If a party's rejection of a mediator's proposal takes place after the exploration process, it has a much more constructive function in the negotiation process. The mediator then has an excellent basis for conveying to the bargaining counterpart the message that a given demand cannot be realized, at least not in this round of negotiations.

If the parties cannot be nudged into agreement using the above tools, the mediator can suggest some useful tactics. The groups working with a mediator should not number more than five. Larger sizes impede the possibility for compromise. But even in groups of five or less, problems develop; e.g., no one wants to be the first to move or no one wants to challenge an obstructive member. To get the negotiations moving, the mediator may suggest a meeting with a single representative from each group. It is often easier to talk realistically in the absence of an audience. Thus, a session of this kind can serve as the basis for resolving major barriers to agreement. If all goes well, the two representatives may return to their respective groups with a proposed settlement in hand.

In some cases settlement continues to be an elusive goal. After three or four stalled sessions, the parties may ask the mediator to suggest a settlement or the mediator may inqure about their interest in this tactic, which is generally reserved for hopeless cases. Both parties review the mediator's written proposal for a settlement. They usually ask questions about the choices made. In most cases they will accept the proposal with or without modifications. If a mediator has been questioning, listening, and absorbing well, he or she will be able to present a package that is reasonably satisfactory to both sides.

CONCLUSION

In this chapter, I have attempted to examine mediation from the parties' point of view: the demands it makes on them, the benefits they can derive, and the actions that will make the process productive for them. Mediation is an amazingly flexible process. Parties who understand the process can help to make it effective. If the parties use in their own negotiations the approach employed in mediation, they should be able to do most of their negotiating without help.

Mediation in the Resolution of Collective Bargaining Disputes

By Ira B. Lobel*

This chapter will examine how mediators help the parties resolve outstanding issues and bring about a settlement. Mediation is an extension of the collective bargaining process. Collective bargaining is a process where the management and employees negotiate over wages, hours, and working conditions. The very nature of the process creates conflict. For example, employees, speaking through their union representatives, may want more money than the employer wishes to give. The employer, speaking through its representatives, has a different view on what constitutes a fair and just wage. Employees normally want unlimited time off; the employer normally wants to restrict released time and maintain productive work time. Nevertheless, in the majority of cases, management and the union settle a contract amicably, with little fuss or fanfare.

In some instances, however, the parties have difficulty reaching a settlement. It may be that one party does not understand or agree with the other's dilemma or position. It may be that either party understands the problem but has a serious disagreement on how best to resolve it. Perhaps the parties are not communicating. Failure to reach agreement during negotiations can create antagonism and animosity in the work environment. In the private sector, failure to agree may result ultimately in an employee job action, even the closing of a plant. Failure to agree can also result in an employer locking out employees, using that device as an economic lever to force a union to succumb. In the public sector, a breakdown of negotiations often leads to fact finding or arbitration, where a settlement is imposed on both parties. Although the failure to agree may not lead to a strike, lockout, or arbitration, an unsettled labor dispute will have a detrimental impact on the work environment. While parties to collective bargaining agree that conflict is endemic to the process, both will similarly agree that ultimately, everyone must get along.

In striving to reach a settlement, the parties will often seek assistance. One means of assistance is through a mediator, a neutral third party brought into negotiations with the responsibility of helping the parties reach settlement. A mediator accomplishes this by serving as a go-between, timing a suggestion, throwing out a trial balloon, coming up with an innovative idea, or assisting a chief spokesperson with the bargaining committee. A mediator will do whatever is necessary within the law to help the parties reach a settlement. Mediators lack authority to tell the parties what to do; their power is merely that of persuasion. By making sensible comments and proper suggestions at the appropriate time, however, the mediator can bring closure to negotiations.

There is nothing magical about the mediation process. We see it in various forms daily. A marriage counselor is often a mediator between two spouses. Former Secretary of State Alexander Haig used mediation principles when he shuttled back and forth between England and Argentina during the Falkland Island crisis. Former Special Envoy to the Middle East Philip Habib and Secretary of State George Shultz have used mediation principles in Lebanon. It is this type of shuttle diplomacy that is used by mediators in settling collective bargaining disputes - shuttling back and forth between labor and management, seeking clarifications and compromises, asking questions, and making suggestions until a settlement package can be initiated by each party.

Unlike the Haig or Habib example, the labor mediator does not have economic or political sanctions to use as a tool to encourage labor and management to reach settlement; instead, the mediator has limited hardware to get the parties to agree. The mediator must rely on the parties' desire to reach an agreement (or their fear of being unable to reach an agreement) as the principle lever to encourage and cajole the parties into taking positions that will ultimately lead to a settlement.

The inexperienced labor relations practitioner may envision mediation as a highly structured or clearly defined process. In reality, mediation is a fluid, seat-of-the-pants type process. Mediators can accomplish their goals simply by showing up and allowing the parties to claim that a mediator was present. Settlement is sometimes achieved by talking to one side privately for a lengthy period of time. It may be achieved by setting artificial deadlines for the collective bargaining process. The mediator's approach depends on the situation, the parties, the issues, the place, the timing and most of all, personalities. For example, a mediator may use a different approach with a group of steelworkers than with university professors. The mediator may be more concerned about the expiration date for employees in a paper mill - where no contract means no work - than about a labor dispute involving a newspaper publisher, where the parties traditionally negotiate well past the contract expiration date. Timing may become more of a factor in a seasonal business, such as a resort hotel, than in a year round business, such as a coal mine.

Once involved in collective bargaining, the mediator typically does not care what the industry or setting is. The differences in the collective bargaining process are more subtle than substantive. In a 24-hour-a-day, three shift operation, a mediator may be confronted with unresolved issues regarding scheduling and weekend work. A mediator is more apt to discuss issues of health and safety in an asbestos mine than in a high tech manufacturing plant. A mediator is more apt to hear about questions of academic freedom in a university than in an automobile plant.

These differences are minor compared to the similarities in the mediation process, such as resolving disputes over wages, hours, insurance, and the like. The dynamics of collective bargaining may depend more on the personalities of the people involved than on the industry or issue. For the mediator, many of the underlying dynamics of bargaining situations are similar.

WHO ARE MEDIATORS AND HOW DO THEY GET INVOLVED

Most mediators are labor relations professionals who have a vast amount of experience, either as a neutral or a former representative of either management or labor. The availability of mediators and mediation services will vary depending on whether the employer is in the private or public sector and, if public, the legislation of the state involved.

In the private sector, mediators from the Federal Mediation and Conciliation Services (FMCS) are used for most mediation activity. Established under the National Labor Relations Act of 1947 (the Taft-Hartley Act), FMCS receives by law a notice of all contract expirations 30 days before the expiration of the collective bargaining agreement. Upon receipt of this notice, the mediator may contact the parties and discuss the progress of negotiations. During these conversations, either party may request the involvement of a mediator. In addition, either party may call the mediator and request assistance.

In the public sector, the availability of mediation varies. In some states, mediators are appointed, on request, by various state administrative agencies. Such is the case with the New York State Public Employment Relations Board, the Wisconsin Employment Relations Commission, and the Michigan Employment Relations Commission. In other locales, appointment of a mediator is tied directly to a specific date, such as a legislative budget submission date. In other states, such as Vermont, Ohio or Illinois, where a state administrative agency does not exist, mediators, if needed, are selected on an ad hoc basis by the parties.[1]

It is important to emphasize that mediation is a voluntary process. Both parties must agree to the intervention of a mediator. When one side has made a formal request for assistance, a mediator will typically call the other side and ascertain whether mediation will be acceptable. If it is acceptable, the mediator will schedule a meeting. If it is not, the mediator will try to determine why not and will discuss the issue with either party. To be effective, the mediator must have the cooperation and acceptance of both sides.

WHEN A MEDIATOR GETS INVOLVED

Nothing is more frustrating for a mediator than to be asked to enter negotiations when there are 150 issues left on the table and both sides are posturing for position. Mediators follow various strategies when confronted with the dilemma of too many outstanding issues. In some instances, the mediator may wade through all topics, lumping various categories together in an effort to group issues and compromises from each side. Although this process can be slow and tedious, it is sometimes necessary, when one or both sides are new to collective bargaining and literally must be taught how to negotiate. In other situations, a mediator may follow a more unusual tact.

In one case, where I knew both sides quite well and there was no threat of any work stoppage (the dispute involved a public sector college system negotiating in April for the following September), I informed both sides in joint session that I would not mediate a settlement with 85 issues on the table. In this instance, there were obviously a large number of throwaway items on the table. Each party was posturing. Unless either party got rid of the "garbage", I threatened to pick up and leave until both parties got serious. I then requested a proposal from each party that reflected the "serious issues" and stated if both parties were realistic, I would exchange the proposals. If not, I would recess until August. Here, each party caucused for several hours and handed over their serious issues. Unfortunately, one party kept proposing several items that obviously were throwaways. The meeting was recessed and the parties admonished not to call the mediator until ready to negotiate seriously. Several days later, the parties followed the mediator's suggestion. Eighty-five issues were narrowed down to eight within several hours of negotiations. With eight items left, both parties were willing to concentrate their efforts on resolving those remaining issues.

While it is sometimes difficult to deal with an extraordinarily large number of issues, it can be equally frustrating dealing with only one issue, particularly where both sides are locked into a firm position. This is true when an issue is something one party must "win" and the other must "lose", such as a union shop or binding arbitration. It is important to understand that collective bargaining works best when both parties feel they have won or lost equally. When it is perceived that one party won and the other lost, the tendency in future years is for the loser to get even.

The mediator's function may be to tell one side or the other the facts of life. For example, several years ago, I was involved in negotiations where the union represented 80 members in a unit of 350 employees. (Employees had a choice whether or not to join the union.) In addition to the small percentage of members, these individuals lacked special skills or other power that could afford them additional clout. With this limited support and power, the union was not in a strong bargaining position. My job as a mediator was to convince the union that, in this case, the best course of action may be to take whatever the employer offered. A strike in this situation would not have been successful. While the union did not appreciate being reminded of its limited power, these comments brought about a settlement.

In another case, the union represented two different units at the same facility. One unit, comprising about 250 craftsmen, settled a collective bargaining agreement calling for a 7 percent wage increase. The other unit, consisting of 25 professional radiological technicians, had not yet settled when I became involved. While the union obviously wanted to obtain as much as possible for the radiological technicians, who held jobs that would normally pay higher than the craftsman, the union was confronted with a sticky political sutiation. Specifically, the question was whether 25 technicians should receive a higher wage increase than 250 craftsmen in the same unit. On the other hand, if the technicians got less, they would have been upset. The only solution - and management had to be persuaded - was to provide the technicians only a 7 percent increase. My role as a mediator was to convey this proposal to the employer. The union was unable to offer this proposal formally across the table (because of possible unfair labor practice implications). The mediator convinced the company to offer the same wage increase to both units and, simultaneously, to factor in different elements such as hazardous duty pay. This addition to the package offered professional employees more money, but not so blatantly as to create a political dilemma for the union. In this fashion, both parties were satisfied with the final settlement.

In other situations, the role of the mediator is to convince one party of the other's resolve on a particular issue. Recently, I was engaged in a university where the employer opted to increase the deductible for health insurance. The union intimated they would accept the concept only if a pool was established from the premium savings created from the increase in the deductible. Ostensibly, this pool would have made the employees whole for any increase in their liability. Once I was able to convince the employer of the union's resolve on this issue, settlement quickly followed.

Depending on the situation, it may be appropriate for the mediator to help create a crisis or deadline, or avert one by obtaining an extension. It may be appropriate for the mediator to initiate acceptability for a joint study committee, or force the parties to tackle the problems head on. It may be appropriate for the mediator to sit with the parties in joint session and keep tempers below the boiling point, or it may be appropriate to allow tempers to flair and meet the parties separately in order to assist in resolving settlement. A mediator's approach will vary, depending on the situation.[2]

In summary, the best settlement is one in which the parties can agree without the intervention of a third party. If it becomes obvious to one party that settlement is not possible without third party intervention, it is important to request the presence of a mediator after the throwaway issues are resolved and before the parties are so entrenched that further compromise becomes impossible.

PREPARATION FOR MEDIATION

Once the parties agree that the time is ripe for a mediator's involvement, how does a party prepare for mediation. From a mediator's perspective, the answer is easy: exactly the same way you would prepare for negotiations. Before any negotiations begin, it is important for each party to draw up a list of demands. This may include language additions, deletions or modifications. Several years ago, it would have been unusual for an employer to offer initial demands at the bargaining table. Today, this is no longer true. Such demands may include wage improvements, scheduling changes that will improve productivity, additions to health benefits, and the like.[3] If prioritizing and costing of demands is done properly, the preparation for both collective bargaining and if necessary, mediation should not be overly burdensome.

The process of re-evaluating positions and priorities should continue, possibly at a more concentrated level, due to the presence of the mediator. The mediator will attempt to force the parties to look closely at the implications of various proposals, as well as to examine new approaches and compromises.

NEED FOR COORDINATION IN NEGOTIATIONS

The entry of a mediator into a dispute and the preparation for mediation has been briefly discussed. It is now important to identify exactly what happens once a mediator becomes actively involved. The mediator's style and approach will vary widely, depending on the personality of the mediator, the situation and the parties. No two mediators will do exactly the same thing at the same time. Even the same mediator will use different techniques and approaches in the same situation.

During any set of negotiations, there may be several other sub-negotiations taking place within the various labor and management teams and their constituencies. Resolution of these sub-negotiations may be essential to the ultimate goal of obtaining collective bargaining agreement. For example, the union's chief negotiator may bargain with both the union team and the membership to encourage settlement on a smaller amount than initially proposed (or even initially deemed the minimum acceptable for settlement). The employer's chief negotiator will constantly bargain with the Board, Presidents, Vice Chancellor, etc., to encourage a more realistic offer that the union will accept. Part of a mediator's job is to help both chief negotiators in their role as bargainers with their own constituents. This may be accomplished by asking probing questions about educational policies, making comments about labor relations trends, or taking other actions that will encourage both parties to reevaluate their positions. Sub-negotiations will begin at an early stage in bargaining and will continue until agreement is reached. Negotiating teams, especially the union, must constantly discuss various bargaining issues with their constitutents and provide advice if the final product is to be accepted by those people who have a vote in the ratification process. This is particularly true in a university where a Board of Trustees, a union, and sometimes the legislature all have a legal right to reject an agreement that has been worked out by the negotiation teams.[4]

A mediator will help both sides with coordination by identifying, discussing, and probing questions, problems, and issues with both parties. A mediator will often use the approach of asking questions to identify both the problem and the source of such problems. With this method, a mediator can sometimes lead the parties to understand the other's perspective and ultimately to find areas of compromise. At times, the mediator may press to bring external decision-makers to the bargaining table so that people involved in the table dialogue better understand the source and seriousness of a particular issue.

CONFIDENTIALITY

It is important to note that a mediator's private conversations are confidential, only to be revealed if the party with whom the conversation was held wants the matter revealed. A mediator will carefully guard the specifics of these conversations. He or she will attempt to point either party in a specific direction, however, as a result of these conversations. For example, if a particular issue is union security and the management team has emphasized its belief that no current employees should be forced to join a union, the mediator may encourage the union to seek other approaches to union security that may be acceptable to the employer. In this manner, the mediator may be able to protect the confidence of the employer, while at the same time, obtaining support for a proposal that will be acceptable to both parties.

TIMING

The parties can engage in collective bargaining over a period of several weeks or months before a settlement is reached. Factors that can affect the time needed for negotiations are the number of outstanding issues, the complexity and seriousness of the issues, the contract expiration or a deadline date that may be affected by business conditions (such as the start of school in a university), prior bargaining history, whether the contract is a renewal or an initial agreement, the sophistication of the parties, and the ability and desire of the parties to make the difficult decisions that lead to settlement. All of these factors will affect the right time for settlement.[5]

During any session, a mediator must be careful to time suggestions properly. Often, the mediator will first discuss the problems and issues involved, without seeking a specific proposal, until either party is in a position to consider them positively. For example, several years ago, I was assigned to mediate in a state college system. For several sessions, little if anything was accomplished. It was my perception that the negotiator for the employer had to discuss a number of pivotal issues with the Chancellor before progress could be made. Similarly, the union preferred to wait and see what management would offer a union in a comparable system. It was apparent that both parties desired the presence of a mediator to permit each to tread water. During this interim, the mediator was successful in setting the stage for agreement by identifying possible alternatives and approaches.

CONCLUSION

This chapter has discussed the role and techniques used by mediators in the settlement of labor disputes. One of the fascinating aspects of the collective bargaining process is that the disputes are between people and groups of people. Because of the various ways that people approach problems and problem solving, mediators will use different approaches and techniques. They will offer proposals or make suggestions based on their experience in dealing with people in various industries or other organizations. While some of the approaches and techniques discussed in this chapter are common, there is no certainty to a process that involves the attempt to convince individuals to modify positions.

ENDNOTES

[*] *The views expressed in this chapter are those of the author and do not necessarily reflect those of the Federal Mediation and Conciliation Service.*

1. There are several important differences in the nature of dispute settlement mechanisms between the public and private sectors. In the private sector, the strike always looms as a possibility if the negotiations breakdown. In the public sector, where the strike is often illegal, failure to agree may push the dispute beyond mediation to fact finding, or in some jurisdictions, to arbitration. Fact finders make written, non-binding recommendations that will hopefully form the basis for settlement of the dispute. If the parties fail to agree, there may be further bargaining, or a legislative hearing, or the employer may have the right to impose a settlement, or, in some jurisdictions, there may be a right to strike. With arbitration, a neutral third party is called in to make a written decision that will become binding on all parties. A decision may also be based on a compromise of the last positions of either party, or may be the final offer of either the employer or the union, with no right of the arbitrator to compromise either position. In any event, the actual form of the fact finding or arbitration procedure will depend on the enabling legislation in that state. Due to the strike possibility or impossibility, or the availability of fact finding or arbitrations, the strategies and techniques used by both the mediator and the parties may differ. An employer or union may decide to make their best positions known before the strike. In a fact finding or arbitration situation, the parties may tend to hold a proposal back so that they can give something up during fact finding or arbitration.

2. One of the major functions that a mediator will perform is to attempt to get both sides to question the risks of going out on strike or the risks of going to the next step in the impasse procedure process - the impact of a fact finding report or the dangers and risks involved in an imposed arbitration award. The questioning may be more difficult in the public sector because the risks are not as clear. But regardless of the sector, the mediator will attempt to raise questions about the costs of disagreement, by relating his or her own experiences and by raising questions about the particular negotiations with which he or she is involved to induce the parties to question their own positions and moderate their demands or proposals.

3. After demands are formulated, their impact and cost should be analyzed. They should be categorized into three kinds: an absolute yes, an absolute no, and a maybe. After demands are exchanged at the bargaining table, each party should evaluate the others' proposals in the same way. The maybe's should be prioritized according to what is the most important or the least harmful to give. These initial priorities should set the stage for negotiations and should be constantly re-evaluated and modified. The process also depends on the exchanges that take place at the bargaining table and the

apparent position and priorities of each party. For example, many employers today are seeking to have employees share the cost of health insurance. Form some unions, this demand would illicit absolute no, with both sides understanding that a strike would occur if the shared cost was part of the final package. For others, the sharing of health insurance would be a maybe, depending on the mix of the entire package. The priority of this item may change throughout negotiations, depending on the ability of either party to force its will on the other. With regard to health insurance, the real position of either party may not emerge until the parties are close to a settlement. Once prioritization is accomplished, the parties should have a good idea of the economic and non-economic impact of all proposals. In a manufacturing plant, employees will often calculate to the hundredths of a cent the per-hour cost of each percent wage increase and each fringe benefit increase. No logical employer will offer a wage increase without knowing the cost of that increase. The same is true of health insurance, pension, and other economic improvements. In the non-economic areas, employer and union alike should evaluate the implications and impact of all new language to ensure that the final agreement is cogent and well conceived. Mistakes at the bargaining table can be extremely costly.

4. For example, in a university, law and medical professors may have different working conditions than other members of the faculty. Negotiators from both sides must work to accommodate specialized interests. Both parties often engage in a practice of counting votes that will ensure ratification of a contract. For example, if the law and medical professors comprise a large percentage of the bargaining unit, their special needs may have to be dealt with to obtain a contract that will be ratified. If, on the other hand, they represent a comparatively small portion of the unit, both sides may choose to neglect their special interests, unless they have a relatively large amount of power that is not related to numbers of employees in the unit (such as members of leadership or fund raising capabilities). Particularly in public sector disputes or in industries that have public boards (such as universities or hospitals), it is crucial that the management negotiating team be aware of the goals of other groups within the university, the municipality. For example, in a public university, the legislature will most likely have the final say on the economic increase. The management negotiating team, before offering a package to the union, must have a good idea of what the legislature will ultimately agree to. If they agree on a package that the legislature does not pass, they will not only have a serious problem with the legislature, but also with the union, which will accuse the management of backing away from a tentative agreement.

5. There are numerous stores of unions and managements who attempt to settle contracts several weeks before the contract expires, only to have the settlement rejected by the union membership. This may be due to the perception that if the parties spend another week negotiating, there will be more money available. If this mind set is a realistic possibility, it may be a mistake to settle early.

PART FOUR:

The Administration of the Contract

Successful contract administration requires mutual respect, good communication, and adaptable administrative structures for managing contractual disputes. After negotiating the agreement, living with the labor agreement - managing the day to day operations using the terms and conditions of the contract - is the litmus test of a viable collective bargaining relationship.

There are no set patterns to follow or ready prescriptions for success. The unforseen dimension of the negotiations process often surfaces when the contract must be administered. Moreover, idiocyncratic features of the academic organization contribute to the complexity inherent in contract administration. For example, territorial jurisdictions of employees and their employer have never been clearly defined. Also, faculty managers are loathe to call themselves managers - especially in relation to departmental secretaries or technicians. Dr. Bjork, in his chapter, correctly identifies a continuing problem for the management practitioner and other executives in the academic environment when he observes "current expressions of dissatisfaction with the impact of collective bargaining on higher education have a substantial amount of their root system in vague, naive, and conflicting ideas about who is in charge of or responsible for which components of higher education organizations."

One of the principal areas of difficulty for the labor relations practitioner is grievance administration. Issues concerning the definition of a grievance, the deadlines for responses, the proper use of employee released time, grievances that do not fit the contractual definition, whether the meeting held was indeed the informal first step of the procedure, why time limits must be abided by, and how to draft a technically sound grievance response all occupy a great portion of the practitioners time.

The grievance procedure is, after all, the heart of of any labor agreement. Nearly all negotiated agreements contain such a provision. It is the exclusive procedure available to the parties and the individuals they represent for resolving disputes over the interpretation and application of the contract. Negotiated grievance procedures generally consist of a number of successive steps and set forth time limits for initiating the steps and obtaining responses. It is common in higher education (and in private industry) to negotiate a grievance procedure that culminates in binding arbitration.

Arbitration is a quasi-level proceeding in which an impartial third party renders a final and binding award. Many contracts stipulate that the parties select an arbitrator from a list supplied by the American Arbitration Association. Generally, arbitration provisions prohibit the arbitrator from rendering an award that alters or modifies the terms of the labor agreement. It is not the function of the arbitrator to rewrite the agreement. While arbitration hearings are conducted on a less formal basis than court proceedings, the union, as the moving party, must demonstrate that management has violated the agreement. An exception to this standard is in disciplinary matters. In such cases, management usually is required to show cause for action it has taken and therefore must shoulder that burden of proof.

The first chapter in this section, edited by Mr. Jacob Samit, presents guidelines for handling grievances at the formal level. The paper offers practical advice to managers responsible for conducting grievance meetings. It includes helpful tips on handling employee grievances and a grievance investigation checklist.

Mr. Nicholas DiGiovanni, Esq. writes on preparations and considerations required for the presentation of labor arbitration cases. The chapter is designed for the laymen and particularly for those administrators charged with representing their institutions in arbitration cases.

The paper by Mr. Thomas D. Layzell provides information on arbitrator selection. His paper includes an exploration of arbitrator selection models and lists the advantages and disadvantages of the permanent umpire model in place at the Illinois State Universities and Colleges. Mr. Layzell also identifies questions that should be asked before selecting an arbitrator.

The selection by Dr. David Kuechle highlights administrative problems that can occur on a campus where academic and non-academic administrators are not taking each other's actions into account during the contract administration phase. The author presents a case study and analyzes it at the conclusion of the paper. He offers insight into appropriate management systems that can accommodate the contract administrations process.

The final selection in this chapter by Dr. Daniel J. Julius discusses effective contract administration in the academic environment. The responsibilities of executive management, middle managers and first line supervisors are explored.

Guidelines for Handling Grievances at the Formal Level

By Jacob M. Samit

From management's perspective, the first formal grievance meeting should establish a detailed description of the grounds of the grievance; the proposed remedy; the circumstances and conditions that led to the grievance; and, most important, the terms of the contract the grievant claims have been violated. At the first formal level, management should hear the grievant's allegations of the facts and collect relevant information so that the allegations can be evaluated and a written response can be made to the grievant.

At this time, it is the grievant who must demonstrate what specific terms of the contract have been violated. Management should not allow itself to be responsible for demonstrating the reverse, or for refuting union allegations. When a grievance is brought to the attention of campus management, the action should be investigated informally. Whether a grievance is successfully resolved without resort to arbitration, or resolved in management's favor in arbitration, is often determined by how carefully a grievance is investigated. In any event, management should obtain as much information as possible before the advent of the first formal meeting. A written description of the grievance should be required from the grievant before the formal meeting, and written confirmation of the meeting date and location should be provided.

INVESTIGATING EMPLOYEE GRIEVANCES

The following guidelines should be kept in mind when investigating grievances.

1. What is the alleged grievance? Identify the issue.
2. Get the name and classification of the aggrieved employee and the names of other employees who may be involved or were present or have knowledge of the situation. Get the date, time, and place the problem occurred.
3. What section(s) of the agreement were violated? Are there other contractual provisions which may have direct or indirect bearing on this grievance?
4. Review the history of this grievance:
    - identify what caused the grievance; determine
    - what facts have bearing on the case;
    - obtain, examine, and organize all records and documents; and
    - talk to individuals who can shed light on this case.
5. For further review,
    - check previous grievance settlements for possible guidance,
    - check the experience of others in similar cases, or
    - be aware of prior practices in handling this or related problems.
6. What are realistic solution(s) to this grievance? Questions to be considered include whether
    - you will be able to explain, and in a logical fashion, how the solution was arrived at and whether
    - your solution makes sense in light of prior settlements on related issues.

While there is no one specific formula for investigating (or settling) any given grievance, some general propositions are worth remembering. If an administrator discovers, during an investigation of a grievance, management-made errors in judgement or actions, the situation should be corrected. Management, together with the union, should let employees know that individuals who continually process nonmeritorious grievances could lose the confidence of executive management, first-line supervisors, and employees. It is also important to be able to draw a distinction between a legitimate grievance and a complaint or employee gripe. Employees may have legitimate gripes that are not grievances because they are not a violation of contractual terms. Often such gripes involve disputes between employees, or occur in areas where management does not exercise responsibility effectively.

To summarize, management should be prepared to examine administrative records relevant to the grievance. This may include the personnel file, payroll records, attendance records and the like.

Management should distinguish between fact and opinion. For safety's sake, take nothing at face value. Until it has been checked out, it isn't "fact". A grievance often arises in an emotional situation, giving rise to a certain degree of vagueness or paranoia.

Contact the supervisor (chairperson, dean, etc.) to verify the facts. Try to develop an understanding of the interpersonal dynamics at work and discover why certain evidence is being presented. Ask questions and listen carefully to the responses.

Determine which facts are relevant to the matter under discussion. Documenting only relevant and essential material facts will save time.

Finally, in investigating a grievance, be aware that the non-substantive grievance may be only a symptom of a more serious labor relations problem.

QUESTIONS ASKED AT THE FIRST FORMAL GRIEVANCE MEETING

A grievance meeting is not an evidentiary hearing. It should be held at a time mutually agreed upon by the parties. Before convening a grievance meeting, the administrator responsible for conducting the meeting should have a copy of the grievance. A grievance form should be available, which is designed to provide, for the parties simplicity and consistency in processing grievances. It should contain the grievant's statement of the information below.

At the first formal meeting, management should obtain answers to the following questions:

1. What terms of the contract have been violated? With regard to each specific allegation of the grievant, how has the university violated the particular term(s) cited? Remember, the contract can be violated only by a specific act of an administrator, or the omission of a required action. Employees will sometimes file grievances because managerial style or attitudes disturb them.

2. Who in the bargaining unit and in management is involved in the grievance?

3. When did the alleged event occur?

4. What facts led the grievant to believe the cited terms had been violated?

5. What remedy is the grievant seeking?

6. What precise interpretation is the grievant or the union giving to language in the contract and why?

7. Is the union raising any other allegations or claiming any other contract violations? Does the union have any other evidence to present? The administrator should ask these questions at the end of the grievance meeting.

It is worth stressing that management should listen carefully and sympathetically, but objectively. Take notes on essential information. It is equally important to ask questions for clarification or when seeking additional information. Keep your questions, and the grievant's, focused on specific acts or omissions giving rise to the grievance and specific articles of the contract violated. Do not be drawn into an argument about what did or did not occur.

At the end of all meetings, the administrator should indicate that the arguments presented will be considered, and a written response forwarded, in accordance with requirements of the contract. The administrator should not engage in discussion about his or her capacity to settle the grievance.

It is extremely rare that management will answer the grievance at the first formal meeting. Responses to the grievant or union should be framed with the assistance of Employee Relations personnel or legal counsel.

RESPONDING TO THE GRIEVANCE

The administrator should forward a written answer to the grievance within the contractual time limitation. While there is no one specific model or format for a response, in general, the response should be brief and should refer to the provision(s) of the contract alleged violated by the grievant. Grievance procedures usually allow for review and correction of contractually required procedure, not for a review of subjective judgement made by administrators. Therefore, lengthy rationales for such judgement do not belong in the response. Should the grievant decide to file the grievance at the next level, superfluous language or management's "rationale", if put into a prior written response, could weaken management's case or constrain management from settling the case at a future date.

CONDUCTING A MEETING AT THE SECOND FORMAL LEVEL

Many grievances won't be settled at the first formal level. The individual who reviews the case at the second level should have made an exhaustive investigation of the situation and fully documented the facts and management's position. If the grievance goes to arbitration, the arbitration will give more weight to facts than to hearsay or opinion.

Generally, the administrator conducting this grievance meeting must verify information obtained at the first formal meeting (and relevant information obtained while investigating the grievance). The questions asked at the first formal meeting are applicable, with some modification, to the second formal meeting. As in the previous case, the administrator should forward a written answer to the grievant within contractual time limits.

The Proposed Remedy

In most cases, a grievance can be settled at any time. Moreover, it is not uncommon for management (or a grievant) to propose a settlement different from that stated on the grievance from. The proposed remedy may provide management with the means to resolve alleged claims. In some instances, what is not stated on the grievance form may be as important as what is alleged. An administrator is obligated, however, to explore the proposed remedy if it appears, on the surface, that the remedy is somewhat unrelated to the terms of the agreement that were allegedly violated. (A remedy proposed by management does not constitute an admission of guilt for purposes of arbitration.) Exploring a proposed remedy may also provide an administrator greater insight into supervisor problems. It is not uncommon for employees grievances to elucidate other, larger administrative or organizational concerns.

In any event, it is most important to comprehend the proposed remedy at the outset of the grievance. While it may not be prudent or practicable for management to solve a particular grievance, it is essential that management fully understand the issue being disputed.

CONVERSATIONAL TONE

At grievance meetings, management should not be defensive, nor should management allow itself to be interrogated by the grievant or union. Generally, management should not attempt to try the case in the course of the grievance meeting. Responses to the grievant should be brief, factual, and non-argumentative. Remember, this is a grievance meeting, an opportunity for the grievant to state his or her grievance and be heard. If the grievant tries to put management on trial and ask, for example, "Why did the university do what it did?", the administrator should advise the grievant that the purpose of the meeting is to hear the grievance and not to defend the university's actions. If the grievant unduly harasses the appropriate administrator, the administrator may terminate the meeting. Experience shows, however, that such union behavior is not common.

PROVIDING THE UNION WITH INFORMATION

The union is entitled to any information that is relevant and necessary for the responsible processing of the grievance. This does not mean that the union is entitled to information that would be burdensome or onerous for management to accumulate or prepare. All union requests for information from the university should be in writing.

To use management's time most efficiently, most requests for information, documents, and data collection should be made or referred through recognized channels. Should the grievance be pursued, an administrator will then contact other appropriate individuals when, and if, information is required.

UNIONS ARE POLITICAL ENTITIES

Although grievance meetings usually are deemed confidential, unions are political entities. Therefore, it is not uncommon that information or decisions deemed favorable to the union find their way into official union newsletters and the like.

Observers should not be permitted at grievance meetings. The appropriate participants should be identified in the contract. The parties should agree that specific statements made and records used in grievance meetings shall be kept confidential. Statements by management to the press or to the public about what went on at a grievance meeting are usually inappropriate.

Elected union officers or paid consultants feel compelled to demonstrate effectiveness and loyalty to the rank and file. Management's best defense against erroneous publicity or union propaganda is to adhere scrupulously to the written agreements, to treat employees equitably, to be consistent in responding to the union, and to refrain from reacting personally to union tactics.

CONCLUSIONS

Grievance procedures give life to the contract. Grievance procedures provide employees with a hearing, they permit systematic channeling and resolution of conflict, they allow for enforcement of the contract, they enhance employee-management communication, and, to a great degree, they preclude the parties' need for continuous negotiations. Formalized grievance mechanisms, however, can also highlight management weaknesses. Being accountable for contractual provisions entails an adjustment on the part of administrators who may be used to working in organizational environments where "finality" on managerial issues was not often possible to attain.

The successful implementation of negotiated grievance procedures demands that campus managers must coordinate their positions. This is essential because a lack of coordination can lead to situations where administrators undermine colleagues. Moreover, inconsistency in contract interpretation will antagonize the union(s). Administrators should be aware that it isn't necessarily bad to have a grievance brought when a situation is unclear. In a mature collective bargaining relationship, both management and union representatives work together to solve contractual disputes.

The Preparation of Labor Arbitration Cases

By Nicholas DiGiovanni, Jr.

It is hard to overemphasize the importance of arbitration in any analysis of labor-management relations. First of all, in traditional terms, arbitration usually serves as an agreed-upon substitute for the strike. A labor union gives up its right to strike during the life of the contract in exchange for a binding dispute-resolution procedure. Even in the public sector, where strikes for the most part remain illegal, contractual arbitration provides an effective alternative to the tension and strife that would be inevitably spawned by unresolved disputes arising during the life of the contract.

Second, arbitration serves as an on-going method of clarifying the collective bargaining agreement itself, as cases resolve ambiguous clauses and define the extent of employee and employer rights. This "fleshing out" process not only clarifies the existing contract language but provides critical information to both parties when they plan their strategies and define their needs for the next round of negotiations.

Finally, as a forum for individual grievances, arbitration provides employees with their "day in court", a chance to be heard before a neutral judge whenever they feel aggrieved by an action of management. As such, arbitration can lessen the tensions between employees and their employer by requiring both to be held accountable to the terms of their contract as interpreted by a neutral arbitrator.

Not surprisingly, the U.S. Supreme Court has looked favorably upon arbitration as an expeditious and just method of resolving labor-management disputes.[1]

For those of us who practice labor law and try arbitration cases, it is certainly apparent that the intricacies of arbitration and the subtleties of contract interpretation deserve more attention than a single chapter can provide.[2] But arbitration is not always practiced by lawyers. It is not designed to be an overly legalistic process and, frequently, the advocates in an arbitration hearing will not be attorneys.

This chapter, then, is designed for the layperson, not the lawyer, and particularly for those administrators charged with representing their institutions in arbitration cases. By observing a few key guidelines discussed herein and by adequately preparing for an arbitration case, an administrator may be able to enhance his or her presentation at the hearing and effectively put forth the institution's arguments in a given case.

THRESHHOLD ISSUE: IS THE DISPUTE ARBITRABLE?

Since arbitration is usually the final step of the grievance procedure, any preparation for arbitration should begin with a look back at the original grievance and how it was processed through the earlier steps. Almost every grievance procedure will delineate detailed groundrules on what can be grieved, how a grievance is to be filed, what time limits must be followed and how the grievance is to be moved through the process to arbitration. Most of the time the parties have agreed that failure to follow these procedural requirements will result in termination of the process.

Arbitrators draw their authority only from the contractual documents which created them and, consequently, they are bound to enforce whatever procedural requirements and limitations on the process the parties have agreed to place in the contract. If a grievance has not been properly processed in accordance with contractual provisions, or if the dispute goes beyond the scope of what the parties agreed could be arbitrated, the arbitrator may very well be faced with a threshold question of whether the case should be heard at all.

It is very important, then, that administrators should first examine the earlier steps of the grievance procedure to determine (1) whether the issue is one which can be arbitrated and (2) whether there were procedural irregularities sufficient to justify dismissal of the grievance.

First of all, the grievance itself should be reviewed to determine whether it was a valid grievance under the contract i.e. whether the dispute is one which the parties contractually agreed could be grieved. For example, many agreements will limit the definition of a grievance to only those claims involving alleged violations or misinterpretations of the collective bargaining agreement.[3] Under such a limited definition, the grievant must raise an issue based on the interpretation of a specific provision of the contract. If the grievance instead cited *no* specific contractual language claimed to have been violated but merely stated that management's actions were "unfair," or that it was contrary to past practices, a valid argument could be made by the administration that the dispute is nongrievable to begin with and, thus, non-arbitrable. In the faculty sphere, some agreements have specifically stated that matters of academic judgment cannot be arbitrated. Thus, a dispute over a tenure decision under such language could not be submitted to an arbitrator for decision. Other agreements may provide that the exercise of any specific management right cannot be grieved.[4] Some contracts may allow certain types of disputes to be grieved but not arbitrated.

In all of these cases, then, it is important for the administration to review the scope of the case. Is the dispute one which the parties agreed could be grieved? If so, is it one which the parties also agreed could be submitted to binding arbitration? If the union has not presented an arbitrable matter, the administration has its initial argument for the arbitrator.

Another frequently raised issue is whether or not an otherwise appropriate grievance was timely filed. In these cases, the issue raised is clearly grievable, but the union has been lax in bringing forth the case. Almost all agreements place certain time restrictions in the grievance procedure, requiring a grievance to be filed within a certain number of days after the action which gave rise to the grievance occurred (or after the grievant could reasonably have known about the action). Often such agreements will go on to state that if a grievance is not timely filed, it will be forfeited automatically.[5] Similarly, time limits are also spelled out for processing a grievance from one step to the next. Such restrictions are very common and are designed to promote prompt resolution of problems in the workplace. Here, again, administrators should be sure that the grievance now being submitted to arbitration was timely filed in the first instance, and if so, whether it was processed through the lower steps in accordance with the time limits in the agreement.

Administrators preparing for arbitration should also be sure that the grievance has not expanded in scope as it moved through the procedure. Oftentimes, as the grievance is heard at various steps, the union might add new allegations dealing with the same incident. Usually these new allegations, if viewed independently, would have been time-barred. As much as possible the grievance that proceeds to arbitration should be the grievance that was originally filed at step one. If the grievance has inappropriately "grown" en route to arbitration, the administration should be prepared to limit the case in arbitration to the original complaint. Other procedural defects worth reviewing include failure to first pursue informal channels of resolution before filing the formal grievance and the filing of vague grievances which fail to conform to requirements regarding a statement of facts or specifying contract articles alleged to have been violated.[6]

Hopefully, any of these arguments regarding the arbitrability of the grievance will have been raised in management's answers at the earlier grievance steps. If they were, the defense will have been properly preserved and the arbitrator will be presented the argument as a threshhold issue before considering the merits of the case. Even if not raised below, these arguments should still be presented to the arbitrator.[7]

In some instances, administrators may be advised that if they are presented with an untimely grievance at step one or allegations that might not be grievable, they should not process the claim at all and either argue the procedural issues before the arbitrator or force the issue into the courts. Such an approach, however, can be expensive, time-consuming and, in fact, counterproductive. It is usually a better idea to listen to every grievance submitted and move the case through the procedure while reserving in the grievance answers the right to argue that the matter is nongrievable or non-arbitrable. This is true for several reasons.

First, the grievance procedure first and foremost presents the opportunity for the union and the aggrieved employees to tell management how and why they have been injured by an administrative action.

Regardless of the procedural technicalities, giving the grievants a full opportunity to be heard may lead to an informal resolution of the issue without prejudicing management's position on the merits of the charge.

Second, despite what may appear to be sound procedural arguments, there is always the chance that an arbitrator will nevertheless interpret the case as one which is ripe for arbitration on the merits. In such cases, if grievance meetings are not held, the administration may find itself in the middle of an arbitration case without the benefit of clearly understanding the union's position or the facts which led up to the grievance. The grievance meeting, then, serves as an excellent opportunity for management to ask questions of the grievants regarding what they consider the facts to be, how they see the contract being violated and their theories on the case. A properly-handled grievance meeting should give the administration a complete outline of the union's position and preclude surprises at arbitration.[8]

Third, there is no penalty to management in hearing the merits of the grievance at the early steps. As long as the procedural issues are specifically preserved, the administration can still argue to the arbitrator that the merits of the case should not be heard. It may succeed on this procedural argument. If the case is heard in its entirety, however, the administration may also succeed on the merits of the claim. It thus has two opportunities to win the case instead of one. If the administration loses on both counts and decides a court appeal is appropriate, it still has preserved its argument for the court that the arbitrator exceeded his authority in hearing the case in the first instance.[9]

PROCESSING THE CASE TO ARBITRATION: SELECTION OF THE ARBITRATOR

One of the most important steps in the grievance and arbitration process is the selection of the impartial arbitrator. Arbitrators, like judges, come with a wide variety of backgrounds, attitudes, styles and records. Unlike pursuing cases in court, however, the parties have a much greater role in choosing the individual who will judge the matter. To the extent possible, a great amount of care should be taken to try to select an arbitrator tailored to deal with the particular case at hand.

There are, of course, a number of situations in which the selection of the arbitrator is not within the control of the parties. In some public sector scenarios, the state labor relations board serves as the statutory arbitrator in all cases[10] or is at least authorized to hear, upon proper petition, cases dealing with violations of collective bargaining agreements.[11] In other cases, the parties have agreed to name a permanent arbitrator or a small panel of arbitrators who are chosen to hear all grievances under the collective bargaining agreement.

However, in the vast majority of cases, the parties are directed to the lists of professional arbitrators offered by the American Arbitration Association, Federal Mediation and Conciliation Service or certain state mediation and arbitration agencies. In these situations, the normal procedure is for each side to receive a prepared list of arbitrators from the agency. The parties are directed to cross off all unacceptable names and prioritize the remaining arbitrators on the list. The lists are then independently returned to the agency and the most acceptable match is selected as the arbitrator. In cases where there is no match, additional lists are sent to the parties and the process is repeated. Ultimate failure to find a match can result in agency appointment of an arbitrator.[12]

In evaluating these lists, both sides are usually assisted by a brief biographical sketch provided by the agency on each arbitrator. The American Arbitration Association, for example, provides in the sketch some detail on the types of industries in which the arbitrator has worked. However, there are other sources of information on arbitrators. Sample awards previously written by the arbitrator can often be obtained through the appointing agency. Various personnel and labor law publications will print arbitrators' awards on a regular basis.[13] Advice can be obtained from other administrators in unionized settings or from specialized labor counsel.

Whatever sources of information are used, administrators should be trying to make some informed assessments as to how a given arbitrator will handle the particular grievance at hand. For example, some arbitrators have established solid records of being expert in interpreting ambiguous or difficult contract language. They may be good choices for grievances which involve such knotty contract interpretation, but might not be good choices for a discipline or discharge case. On the other hand, some arbitrators have established themselves as being particularly supportive of management disciplinary decisions and should be good choices for such cases.

The background of an arbitrator may be very important. For example, a case involving the intricacies of the institution's budget process and legislative appropriation may be inappropriate for an arbitrator with no background in public sector work. An arbitrator accustomed to dealing with industrial disputes may be a poor selection for a grievance involving the delicacies of a tenure decision or an academic freedom case. Obviously, a careful review of prior awards might reveal cases similar to the one at hand and the arbitrator's general approach to the subject can be seen. For example, in a case involving an interpretation of a layoff article, it is especially helpful to find an arbitrator who has ruled in another case along the lines of the administration's position in the instant case. In cases involving threshhold issues of procedural arbitrability, it is helpful to select an arbitrator who has shown in prior cases a willingness to listen to such arguments and actually dismiss grievances on procedural grounds. Other arbitrators, by contrast, may have reputations of doing all they can to avoid procedural dismissals.

It should be noted that there are no absolutes in the process of selecting an arbitrator. Like judges, arbitrators can be unpredictable, and the most carefully selected arbitrator might still rule against the administration in any given case. Obviously, a case shaky on its merits or poorly presented will easily be lost regardless of the arbitrator. However, the selection process is nonetheless important. Over the course of many decisions, arbitrators can be expected to develop certain philosophies and attitudes that may or may not be suited to the given case at hand. The time spent in investigating the background and record of arbitrators is usually well worth it.

TRIPARTITE BOARDS

Many contracts call for a tripartite board of arbitration consisting of a management representative, a union representative and an impartial chairman. While the impartial chairman, of course, ends up being the key decision-maker, the other panel members can perform important functions and should not be lightly regarded. For example, the partisan representatives on the panel can ask questions of witnesses during the hearing; can argue the merits of their parties' positions during private sessions with the arbitrator and can help draft the award itself, being particularly sensitive to the consequences of certain language on the parties' relationship. Such representatives, then, should be articulate, knowledgeable individuals with an ability to grasp the issues at hand and a clear understanding of management's position. They should usually not be individuals who will have to testify at the hearing, since, among other reasons, as part of the neutral panel they should not be in a position of judging their own credibility as a witness.

PREPARING THE CASE

Procedural Issues

Once an arbitrator has been selected and a date agreed upon, the administration must begin preparing for the presentation of its case. The starting point for such preparation should be a careful outline of the issues involved in the case and what basic arguments on each issue will be presented by both sides. Such an outline, when properly prepared, can provide a blueprint for constructing the presentation of the case itself and will facilitate a logical and orderly approach to the evidence.

As noted earlier, in examining the grievance as a whole, this administration should first sort out any issues involving procedure and arbitrability. For example, if the grievance was not filed on time, the administrator should line up all the evidence and arguments needed to support the institution's claim that the case is not arbitrable because the grievance was not filed in accordance with contractual procedure. This may include copies of the initial grievance indicating the date filed or, if there is a conflict on the dates, preparation of testimony from the step one grievance officer which will fix the date of filing. Obviously, such a case must also involve evidence regarding the date that the event occurred which gave rise to the grievance and when the grievant knew or should have known about the event. Hopefully, if the issue of untimeliness was raised during the grievance meetings, the administrator will be aware of the grievant's position on the subject and will also be able to anticipate disputes over the facts. The administrator can then prepare to rebut what will likely be the union's arguments at the arbitration hearing.

The more complex issues involving substantive arbitrability may require the preparation of less evidence and more argument. However, evidence of bargaining history might be useful in certain cases to show mutual intent not to have certain areas be grievable. For example, a proposal by the union during negotiations that it could grieve the reasons for laying off staff might have been rejected by management and did not become part of the agreement. If, in a later grievance, the union seeks to attack the merits of a decision to layoff staff, the administration can use the earlier rejected proposal from the negotiations as evidence that the parties did not intend for such use the earlier rejected proposal from the negotiations as evidence that the parties did not intend for such decisions to be grievable. This can be important evidence to help convince an arbitrator that the case should not be heard. Presentation of evidence on this point should include copies of the rejected proposals as well as testimony from a member of the administration's bargaining team regarding the intent of the parties at the table.

It may be appropriate in such cases to prepare a pre-hearing brief, which outlines arguments in favor of not hearing the grievance. This is particularly useful if the administration is seeking a ruling on the arbitrability issue first. If it is expected that the case will nevertheless be heard in its entirety before the arbitrator makes a ruling on the arbitrability question, then the arguments can be summarized in a post-hearing brief.

Even if institutions where labor counsel is not ordinarily used for arbitration cases, it may be appropriate to use counsel on the more significant cases, particularly on matters dealing with the preservation of managerial prerogatives and limitations on what is arbitrable. In addition to his or her skill and experience in presenting such cases, labor counsel often has extensive legal precedent readily available to help construct a particularly persuasive brief on the issues.

Defining the Issues

Aside from threshhold questions of arbitrability, the administration should also be prepared to put forth what he considers to be the issues in the case. Almost all arbitrators will begin hearings with a request from the parties for a stipulated issue for determination. Sometimes this is easily agreed-upon. For example, in a discharge case, the issue may simply be "Whether the College had just cause for discharging X on June 1?"

However, in cases involving complex factual patterns and interwoven contract articles, the issue or issues may be harder to define. The union may be seeking a very broad statement of the issue so that it can present extensive evidence on matters that might be irrelevant to the case or at best peripheral to the real issue can be presented. The union may want to follow this course in order to tip the equities in its favor by presenting a broad picture of administrative unfairness or bad faith even if technical contract requirements were met by the institution. The administration is well-advised to keep the issue as narrowly framed as possible in most cases.

For example, in a case involving the distribution of overtime, the administration may want to limit the issue to "whether the College violated Article 10 (Overtime) in its distribution of overtime to X employees on May 4?" The union, on the other hand, may be seeking a wider scope and suggest an issue such as "whether the College was fair and equitable in distributing overtime on May 4 and whether such assignments were in accordance with past practices in the department?" The latter issue brings in a standard of "fair and equitable" which may not appear in the contract at all. Moreover, the reference to past practices might be offered to give the union an argument that even if the contractual provisions on overtime were technically followed, it differed from the way it might have been done in the past. An administration, which only agreed in the contract to arbitrate alleged violations of the agreement, will clearly want to avoid the broader issue offered by the union and instead keep the arbitrator's attention focused on the specific contract language of Article 10 and whether or not it was violated.

Usually if the union and the administration cannot agree on an issue, the arbitrator may reserve the right to decide the issue on his own after the briefs are submitted. This will give the arbitrator time to analyze the contract, the evidence and the grievance and reach some conclusion on an appropriate issue. This also, however, usually means the rules of evidence will be liberally construed and the union will be allowed to submit evidence in support of its proposed issue despite management's objections to relevancy.

Despite best efforts, an arbitrator may adopt a broader view of the case than management may prefer. Consequently, it is always a good idea for the administration to be prepared to litigate the case not only under its own proposed issue but also under the broader anticipated union issue. For example, the administration arguing that the merits of a certain decision cannot be challenged in arbitration should nevertheless consider introducing some evidence to establish that its decision was at least not arbitrary while still reserving its primary argument that the merits of the decision were not arbitrable in any event. This way, should the arbitrator decide on the broader issue in the end, the administration can still win the case. An alternative approach is to not present any evidence on the broader issue and, if the case is lost, plan an appeal to court on the arbitrability question. As noted earlier, this only gives the administration one way to win the case–by judicial appeal–and is a higher risk approach.

Discipline and Discharge Cases

The standard rule in arbitration is that the union, as the grieving party, always carries the burden of proof. The one exception to this rule is in discipline or discharge cases, where management usually must prove that it had just cause for its action.[14]

In preparing such cases, the administration should focus on several points. First and foremost, the administration should carefully and completely present the factual setting which led to the disciplinary action. If a single incident is involved, such as a fight on the job or an unauthorized absence, the administration should put forth witnesses who can explain, based on first hand knowledge, what happened. At a minimum, the administration should completely delineate the facts which led to the decision to discipline. An administrator preparing the case should also keep in mind that the arbitrator knows nothing about the personalities or the operation of the enterprise. The administration should not assume that the arbitrator will know facts which are commonly known in the department. Thus, in addition to presenting the central facts, a proper presentation should include the establishment of background information to give the arbitrator a complete picture.

It might also be important to establish why certain employee conduct was detrimental to the institution. In some cases, such as drinking on the job, the detrimental behavior may be obvious. However, in other cases, the harm generated by the conduct of the employee might need further emphasis. For example, an unauthorized absence by a boiler operator may result in added work and inconvenience for fellow employees or supervisors as well as a potential danger in leaving a boiler unattended. An incident of sexual harassment of a student by an employee might lead or may have led to a lawsuit against the college or jeopardized a federal grant. In short, the arbitrator should be told why the conduct of the employee was detrimental to the institution. If a particular work rule or performance standard was violated by an employee, the administration should clearly establish that the employee had adequate knowledge of the rule or standard. Employee ignorance of what was expected of him or what rules had to be followed is a common union argument in such cases.[15]

In cases where the discipline or discharge came not as a result of a single incident but after a series of events, a complete record must be established. For example, a clerical employee might have been discharged for excessive absenteeism. In such a case, all incidents of absenteeism, as demonstrated by time cards, other records or testimony, should be evidence at the hearing. Similarly, any and all prior counselings or warnings or other disciplinary actions should be established. An arbitrator should be shown that progressive discipline was followed and that discharge only came after less severe forms of discipline had been tried and failed.[16]

Since consistency in treatment is an important factor in discipline and discharge cases, it is often a good idea to present an exhibit listing other employees who have been disciplined or discharged for the same offenses in the past. Alternatively, testimony can be developed from supervisors describing past disciplinary actions on other employees. Again, if the administration can show that similar records of infraction produce similar impositions of discipline, it will have gong a long way toward establishing the reasonableness of its actions and just cause for the discipline. Other factors looked at by arbitrators for which the administration should be prepared include whether there has been a lax enforcement of the rules; the length of service the employee has; his general work record; post-discharge conduct; and whether there was procedural due process given to the employee, including the thoroughness of the investigation into the incident leading to discipline.

Contract Interpretation Cases

In non-discipline cases, the burden of proof might not be on the administration, but the preparation should be no less extensive. Once again, it is important to prepare a presentation of the facts by witnesses and documentary evidence. If, for example, the grievance involves claims of excessive workloads, management should be ready with evidence on exactly what type of assignments were made and under what circumstances. Never rely on the union to present the facts, even if it has the burden of proof, since the union's preparation and presentation may be inaccurate or purposely sketchy.

Frequently, arbitrations involving contract interpretation involve language in the agreement which is ambiguous. The union may claim the contract says one thing, the administration another. For example, an agreement may specify that seniority should be followed in layoff situations, but it may be unclear as to whether seniority is to be defined as seniority in a particular classification or seniority from initial employment. Or there may be conflicting views on whether the agreement means overall seniority with the institution or seniority in a particular department.

In these and other situations, the arbitrator will search for the proper interpretation of the language. The arbitrator will ordinarily look at different factors to reach this judgment. For example, the past practice of the parties in interpretating the language is very important and may be given considerable weight by the arbitrator. In the case of how seniority is defined, the arbitrator will be particularly impressed with evidence that the parties have interpreted the term seniority to mean service from initial employment with the institution. Consequently, in preparing a case involving ambiguous contract language a thorough investigation should be undertaken to determine whether the language has ever been utilized in the past and if so, how it was interpreted. Union awareness of and acquiescence in these past interpretations is similarly important.[17]

If the particular clause in question has never been utilized before, perhaps the past practice of interpreting analogous language can be persuasive. If, for example, seniority has never been interpreted in a layoff situation, it may have been interpreted in a promotional situation or in determining priority rights to overtime. The contract should be reviewed as a whole for other clauses, and past interpretations given to those clauses, that may help in interpreting the disputed language.

The bargaining history can also be important. Much as legislative history is analyzed by courts in interpreting statutes, the bargaining history surrounding a certain piece of contract language can be of enormous significance in deciding what the parties intended when they drafted that portion of the agreement. The arbitrator's job in interpreting ambiguous language is to try to approximate the parties' true intent. Evidence of how the language came into existence provides direct clues toward ascertaining this intent. For instance, in the earlier example over how seniority is to be defined, evidence might include union proposals during bargaining for specific definitions of seniority that were rejected by the administration and not included in the final draft. This provides some proof that the rejected union definitions do not reflect the parties' intent. Arbitrators are loathe to give a party in arbitration what that party could not obtain in negotiations.[18]

Proposals for standards of review in the contract can be very important. For example, a union might have proposed that employees could not be laid off except for just cause. In a case involving layoffs a year later, the union may argue to an arbitrator that there is an implied standard of just cause in the contract. In addition to other arguments it can make in opposition to such assertions, the administration may place in evidence the early union proposal on just cause for layoffs, demonstrate that the proposal was ultimately rejected and successfully argue that the parties consequently did not intend for a just cause standard to apply to layoff decisions. Certainly, in addition to or in place of documented proposals, the administration should put on the stand witnesses who were direct participants in the negotiations to testify as to what the debate over a particular contract article encompassed. Minutes from negotiating sessions can also be good evidence in recreating what happened at the table. Further preparation to help interpret ambiguous language includes a review of any correspondence with the union indicating an understanding as to the meaning or interpretation of a clause; prior awards involving the same or similar language from other arbitrators; review of the contract as a whole to interpret the meaning of a specific clause; the "industry practice" on a certain issue which, by their silence, the parties may have been assumed to have adopted.

PREPARING WITNESSES AND EXHIBITS

An administrator preparing for arbitration must consider who should testify at the hearing. While arbitration is a less formal adjudicatory process than a court proceeding, it is nevertheless something more than a round table discussion. Cases are presented through witnesses and exhibits, and they are developed through a question and answer format with an opportunity for cross-examination.

In deciding who should testify, an initial consideration must be who has the information and background needed to establish the administration's case. Those with the most direct knowledge of the facts deserve first consideration since their knowledge is based on first-hand experience, not hearsay. Witnesses who testify to facts based on what others have told them will not be effective witnesses for the most part and their testimony will be immediately subject to objection as hearsay. For example, in a typical discharge case, the first or second line supervisors will ordinarily be the best witnesses since they can testify directly as to what happened and what the employee did. A personnel director in such a case would not be a good witness with respect to the employee's conduct since he may have received the information second or third hand. The personnel director may, however, be an important witness to establish how the institution consistently handles reports of such conduct or to present the grievant's past work record and service.

Witnesses should be prepared to essentially "tell a story" in an orderly fashion, guided by effective questioning by the administration's representative at the hearing. While a long, rambling monologue by witnesses as to what happend is not a good idea, neither is a completely memorized script. Arbitrators listen for truth and candor in witnesses, and while they expect that witnesses on both sides are coached, they find more credible the testimony of a witness who does not perform like a robot. Consequently, questions to witnesses should be reviewed carefully with an eye toward establishing all basic points necessary to win the case. The type of response to each question should be reviewed and, on a few selected questions, and might even be memorized due to the significance of the inquiry. But witnesses in general should be allowed to relate the story in a style and in language that is comfortable to them.

Witnesses should be instructed on a few important guidelines on answering questions, both on direct and on cross-examination:

1. Answer all questions honestly
2. Only answer the particular question asked; do not volunteer information not asked for
3. Do not be ashamed to say you do not know the answer to a question
4. Do not guess at an answer, particularly on cross-examination
5. Be brief in answering questions on cross-examination
6. If an objection is raised to a question, do not answer until the arbitrator has ruled on whether the question should be answered or not
7. Try not to refer to notes unless absolutely necessary
8. If you do not know the answer to a question, do not volunteer other people who might know the answer
9. Do not be sarcastic or hostile toward the union's counsel or representatives
10. If you do not understand a question, ask for a clarification.

Various documentary evidence will usually be necessary in most arbitration cases, some of which will have to be specially prepared. At a minimum, the collective bargaining agreement and all grievance correspondence is usually entered into the record as joint exhibits. After that, each case will differ. A discharge case, for example, will usually include any past disciplinary records, such as written warnings or suspensions. Depending on the nature of the case, other exhibits may be copies of relevant work rules alleged to have been violated by the discharged employee; employee evaluations; time cards or similar records in cases where, for example, absenteeism or tardiness is in issue; letters of complaint by students, employees or the public at large; accident reports and cost damages in appropriate cases.

Other exhibits may have to be specially prepared for the hearing. These might include in a discharge case lists of other employees disciplined by the institution under similar circumstances. In a workload case, an analysis of hours worked by each employee in a department may be relevant. In a case involving job postings or promotions, a summary sheet showing the qualifications of candidates for the job, with years' service, may be useful. In all cases, administrators should remember what it is they are trying to establish and whether a prepared exhibit will assist in making their point. Exhibits should be used only when they are necessary to prove the case, can assist in establishing an important point or necessary background information, or can help the arbitrator get a clearer picture of the case as a whole. In cases where the exhibit is prepared, the person who prepared the exhibit should testify as to how the document was put together. It is also a good idea to have the background data from which the exhibit was generated at least available for inspection in the event there is a challenge to the accuracy of the exhibit.

THE HEARING

Arbitration hearings can differ dramatically depending on the nature of the case, the personalities of the representatives and the style of the arbitrator. But there are certain facets common to most arbitrations which are worth keeping in mind.

The Issue

As noted earlier, arbitrators generally like to open proceedings with an agreed-upon issue. This will tell them precisely what they have to decide. It is therefore a good idea to check with the other side prior to the beginning of the hearing to see whether or not an issue can be stipulated to by both sides. If this is not possible, the administration should be prepared to put forth its own suggested issue and defend it to the arbitrator at the outset of the hearing. The arbitrator may suggest alternatives, decide what the issue is after listening to arguments or defer the question until after receipt of briefs as part of his general deliberations on the case.

Joint Exhibits

Reaching agreement on joint exhibits can also make for a more expeditious hearing. Usually, both sides can agree on the introduction of the collective bargaining agreement and all grievance correspondence as joint exhibits. After that, both sides may wish to put in exhibits through their own witnesses and even though no objections are likely to be made, they may prefer to make the documentary evidence part of the "story" as the witnesses tell it. However, there still may be a place for agreed-upon documents that both sides will be relying on, such as a local set of work rules or the applications of all individuals for a disputed promotion.

Opening Statements

After the issues have been defined and any joint exhibits entered into the record, the arbitrator will ask each side if they wish to make an opening statement. Except for discipline cases, where management carries the burden, the union usually goes first since it has brought the grievance and carries the burden of proof.

Oftentimes, after the union has concluded its opening statement, the arbitrator will ask the management representative whether he or she wishes to make an opening statement or wait until the union has finished presenting its case. While practitioners may differ on the subject, it is usually a sound approach to make a brief opening statement at the outset. The arbitrator, who knows nothing about the case coming in, usually will appreciate hearing each side's general position and theory of the case in the beginning. This way, as the evidence unfolds, he or she will be able to recognize its significance or more readily understand where the dispute is between the parties. Moreover, the opening statement, from the administration's perspective, can serve as a signal to the arbitrator that he or she should not become too swayed by the selected facts being put forth by the union.

The opening statement should not be a long-winded treatise on the case nor a detailed recitation of the facts. A brief sketch of the facts coupled with a succinct statement of position is not only sufficient but will be appreciated by the arbitrator, who will be waiting for the witnesses to present the "facts", not the representative. Such brevity is also tactically sensible since either party should prevent giving away every detail of the presentation to the other side at the outset of the hearing.

Presentation of the Case

Both parties will have the opportunity to present their version of the case through their witnesses and exhibits. Each side is entitled to cross-examine the other side's witnesses. As noted earlier, the key to an effective presentation is to put forth all relevant facts needed to win the case in an intelligible, orderly fashion. Do not clog the record with irrelevant facts or interesting sidelights since these detract from the important evidence and may cause the arbitrator to lose focus on essential positions.

Further, the administration should not try to put on his or her case through the union's witnesses nor should the administration, as a general rule, engage in extensive cross-examination of the other side's witnesses. Such tactics often backfire and are generally ill-advised since the witnesses are not "friendly" and can do more damage than good. However, this should not preclude a vigorous cross-examination when a witness is vague or even lying on the stand.

Closing the Case

After each side has presented all of its evidence, the arbitrator will generally ask the parties if they prefer closing statements or closing briefs or both. Many experienced labor attorneys will counsel that closing statements are usually a good idea since it leaves the arbitrator with a final impression of the case right after the evidence has been presented. Others will advise that a written brief provides a better opportunity for clarifying the evidence and organizing the arguments, and salient points can often be forgotten in a closing statement. Of course, there is nothing wrong with doing both. Such decisions are often based on the complexity of the case, the lateness of the hour as the hearing is ending, and the knowledge of and opportunity for putting a brief together.

Post-Decision

After the decision is received, the administration, if it has lost, should carefully review the award to determine whether the arbitrator exceeded his or her authority and whether a court appeal is appropriate. Counsel should be consulted on this question, since many states will have specific time limitations established by law for vacating arbitration awards. Advice should also be obtained on the likelihood of success of such appeal.

Finally, the award should also be reviewed for its impact on the next round of negotiations and whether contract language changes will be needed in light of the decision.

CONCLUDING REMARKS

In summary, then, the preparation of a labor arbitration case involves a considerable effort on the part of the administration, particularly in those cases where legal counsel is not being used. The carefully prepared case, however, will ensure a more effective presentation and will heighten the prospects for a favorable decision.

ENDNOTES

1. In 1960, the Supreme Court issued its so-called Trilogy decisions which clearly established arbitration as the preferred method of resolving grievances. *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 80 S. Ct. 1343, 34 LA 559 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S. Ct. 1347, 34 LA 561 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 34 LA 569 (1960). In these and other decisions, the Court states that basic questions of contract interpretation and the merits of grievances should be made by the arbitrator, and a court should not disturb his findings simply because it may disagree with his resolution of the dispute. As long as the award "draws its essence from the collective bargaining agreement," it should be given binding effect. Moreover, while courts can be the final judge as to whether or not a dispute is arbitrable in the first place, doubts over such questions should be resolved in favor of compelling arbitration.

2. A wealth of material has been written over the years about contract arbitration, including many books and treatises on the subject. Some useful resources include Elkouri, Frank and Elkouri, Edna, *How Arbitration Works*, (Washington: Bureau of National Affairs; rev. 1973); Coulson, Robert, *Labor Arbitration--What You Need to Know*, (New York: American Arbitration Association, 1976); Fairweather, Owen, *Practice and Procedure in Labor Arbitration* (Washington: Bureau of National Affairs; 2nd ed. 1983); Fleming, Robben Wright, *The Labor Arbitration Process* (Urbana, Ill: University of Illinois Press, 1965).

3. For example, the University of Maine Agreement with the Associated Faculties of the University of Maine defines a grievance as "an unresolved complaint arising during the period of this Agreement between the University and a unit member, a group of unit members, or the Association with respect to the interpretation or application of a specific term of this Agreement."

4. The collective bargaining agreement between the University System of New Hampshire and the Keene State College Education Association states: "The Arbitration Board shall have no power to add to, subtract from, modify or disregard any of the provisions of this Agreement, nor shall the Arbitration Board substitute its judgment for that of the College with regard to any grievance based upon a challenge of a management right, subject to the provisions of this Agreement."

5. The agreement between the Vermont State Colleges and the VSC Faculty Federation, AFT Local 3190 specifically notes, for example, that the "failure of the grievant to comply with the time limitations of the grievance steps set forth in this Article shall preclude any subsequent filing of the grievance."

6. For example, in *Bryan O'Neill v. Vermont State Colleges*, 3 VLRB 100 (1980), the Vermont Labor Relations Board, acting as a statutory arbitrator, dismissed a grievance on the grounds that the grievant had never given notice to the employer of the "specific nature of his complaint." The Board explained: "Here we find the grievant failed to submit written notice to the College, sufficient to advise his employer of the essential nature of his complaint and relevant facts supportive of his allegations. . . [The Board will] require strict enforcement of the contract language requiring that the nature of the complaint, relevant facts and pertinent contract citations be submitted in writing at the step one level of the grievance procedure." 3 VLRB at 103

7. Some arbitrators will rule that even though a union failed to file its grievance in a timely fashion, management, by not objecting in its grievance answers, waived any argument it may have had on this point. See, for example, *Produce, Inc.*, 50 LA 453 (Keefe, 1968) where the arbitrator stated that "the Company having entertained the grievance on the merits in the steps of the process and having submitted the specific dispute to arbitration *without reservations*, effectively waived the time-limitation of the Agreement by its actions and the matter must now be deemed arbitrable."

   Preserving arguments on timeliness is certainly a safer route. However, other arbitrators have dismissed grievances as being ultimately even if early objection was not specifically made. *Publishers Association of New York City*, 39 LA 379 (Schmertz, 1962).

8. Too often, administrative representatives at grievance meetings are immediately put on the defensive by a union agent and will spend the bulk of the time trying to defend the administration's actions.

   Instead, the administrator handling a grievance meeting should vigorously pursue questioning of the union and the grievant. For example, the administrator should ask which article of the agreement has been violated and find out what specific clauses of an article the union claims have been breached. An academic freedom article, for example, may embrace a variety of rights both on and off campus, both within a classroom and elsewhere. A grievant should be required to pinpoint precisely which "right" has been denied.

Second, all of the facts leading up to the grievance should be ascertained. The administration should ask for all the facts which led the grievant to believe the cited articles have been violated.

Third, with ambiguous clauses, the administrator should inquire as to the union's interpretation of the language and whether that view is based on the bargaining history, past practices or simply the language itself. If past practice is raised, the administrator should insist upon details in order to more fully investigate the case.

Fourth, the union should be asked for the specific remedy being sought.

If the union demands information or documents from the administration, the administrator should ask for the request to be put in writing and review the request with counsel before releasing any data.

9. While national policy favors arbitration as a dispute-resolution procedure, the courts will closely examine awards to make sure the arbitrator has not exceeded his or her authority. See, *Timken Co. v. Local 1123, Steelworkers,* 482 F.2d 1012, 83 LRRM 2814 (6th Cir. 1973); *Monogahela Power Co. v. IBEW,* 566 F.2d 1196, 91 LRRM 2583 (4th Cir. 1976), where the Court explained: "The powers of an arbitrator are not unlimited. He derives his authority from and is bound by the terms of the contract from which he draws his authority; and while he may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement.' His function is confined to the interpretation and application of the collective bargaining agreement under which he acts, and, while he may give his own construction to ambiguous language, he is without any authority to disregard or modify plain and unambiguous provisions. This is a well-established principle of law; it is, also, specifically so provided in the agreement in this case."

See also *Local 670 v. Kerr-McGee Refining Corp.* 103 LRRM 2988 (10th Cir., 1980); *Alabama Education Association v. Staff Organization,* 655 F.2d 607, 108 LRRM 2390 (5th Cir., 1981); *Arco Polymers, Inc. v. OCAW,* 517 F. Supp. 681, 107 LRRM 3200 (W.D. Pa., 1981); *In Re Grievance of Albert Brooks,* 135 Vt. 563 (Vt. 1977); *Milwaukee School District v. Teachers Association,* 287 N.W. 2d 131, 105 LRRM 2267 (Wisc. 1980).

10. In Vermont, for example, the Vermont Labor Relations Board serves as the statutory arbitrator for all grievances arising under collective bargaining agreements for the state college system and for other state employees. 3 V.S.A. Sec. 926

11. Some state laws provide that it is an unfair labor practice to violate a collective bargaining agreement. In these states, a claim that the contract was violated might be brought to the state labor board in the vehicle of an unfair labor practice charge. See, for example, N.H. Rev. Stat. Ann., 273-A(I) (h) and (II)(f); Oreg. Rev. Stat., tit. 20, Sec. 672 (l)(g).

12. Under Rule 12 of the Voluntary Labor Arbitration Rules of the American Arbitration Association, the AAA Administrator has the power "to make the appointment from other members of the Panel without the submission of additional lists."

13. See, for example, *Arbitration in the Schools* (New York: American Arbitration Association) published monthly; *Labor Arbitration Reports,* (Washington, D.C.: Bureau of National Affairs) published weekly; *Labor Arbitration Awards* (Chicago: Commerce Clearing House) published weekly; *Summary of Labor Arbitration Awards* (New York: American Arbitration Association) published monthly.

14. As Elkouri points out: "Discharge is recognized to be the extreme industrial penalty since the employee's job, his seniority, and other contractual benefits, and his reputation is at stake. Because of the seriousness of this penalty, the burden is generally held to be on the employer to prove guilt of wrongdoing, and probably always so where the agreement requires 'just cause" for discharge." Elkouri, *supra,* pl. 621.

15. One arbitrator has explained the importance of clear notice of rules in the following manner: "Just cause requires that employees be informed of a rule, infraction of which may result in suspension or discharge, unless conduct is so clearly wrong that specific reference is not necessary." *Lockheed Aircraft Co.,* 28 LA 829, 831 (Hepburn, 1957).

See also, *Phillips Petroleum Co.,* 47 LA 372, 374 (Caraway, 1966) where the company was required to establish that the employee had actual knowledge of the rule he was charged with violating.

16. The principle of progressive discipline is well-established in arbitration law. Except for serious offenses for which summary discharge is warranted, most arbitrators expect management to employ corrective discipline, utilizing lesser forms of discipline first and then increasing the penalty for further violations.

17. In examining past practices, arbitrators will especially look for mutuality of intent as an important factor. Unilateral interpretations of a contract clause will not bind the other side, but an active or passive acquiescence in an interpretation will go far in establishing a binding practice.

Arbitrators will also consider how well established the practice is, how many times it has been used and over what period. A single incident will usually not establish a binding practice.

18. Arbitrator Edgar A. Jones has stated: "If the [contract proposal] gets caught up in a grievance, the party who proffers the language will have to bear the burden of demonstrating in a later arbitration proceeding that its omission ought not to be given its normal significance. Normally, of course, the plain inference of the omission is that the intent to reject prevailed over the intent to include." *Progress Bulletin Publishing,* 457 LA 1075, 1077 (1966).

Arbitration Selection

By Thomas D. Layzell

There may have been a halcyon era, a Camelot, when employment disputes in institutions of higher education were an aberration, but no more. Employment disputes are now a common feature of the higher education landscape.

Whether such conflict is good or bad is beyond the scope of this chapter. My purpose is to provide some information about an aspect of arbitration that is often given only a passing reference in the literature: arbitrator selection.

Who are these people called labor arbitrators? What do they do? How are they selected? These are increasingly important questions for higher education administrators; yet, an understanding of their answers requires some knowledge of the arbitration process. Arbitration is most commonly associated with disputes over the meaning of a collective bargaining agreement. Considerations of cost, however, have focused renewed attention on arbitration as an economical alternative to litigation even in settings where no collective bargaining relationship exists.

Arbitration is an ancient institution. One of the more well-known stories from the Bible is that of King Solomon's arbitration of a dispute by two women over the parentage of a child. Thomas Hobbes, in *The Elements of Law*, published in 1640, asserted that voluntary, binding arbitration is a law of nature. George Washington, in his last will and testament, created a tri-partite arbitration panel to resolve disputes about the meaning of his will.

The submission of disputes to arbitration may be made compulsory by law in some instances but such procedures are not the subject of this chapter. This chapter will focus on voluntary arbitration procedures and the selection of arbitrators under such procedures.

THE VOLUNTARY ARBITRATION PROCESS

Voluntary arbitration involves an agreement by disputants to submit their dispute to one or more outside parties and to be bound by the decision of those parties. The most common form of arbitration of employment disputes arises from a collective bargaining relationship and that form has received the most attention in the literature. There is nothing inherent in the arbitration process, however, that limits its use to settings with collective bargaining. Many of the points discussed in this chapter are equally applicable to settings with no collective bargaining.

The use of arbitration to settle labor disputes has shown remarkable growth in the last several years. In an article entitled "Profile of a Labor Arbitrator", in the June, 1982 edition of *The Arbitration Journal*, Professor John Herrick reported that the appointments of arbitrators by the Federal Mediation and Conciliation Service (FMCS) had grown from 646 in 1948 to 12,527 in 1978, and appointments of arbitrators by the American Arbitration Association (AAA) had grown from 3,230 in 1960 to 17,062 in 1980.

There are two general types of labor arbitration: (1) interest arbitration and (2) rights arbitration. Interest arbitration involves the submission of a dispute over the terms and conditions to be included in a collective bargaining agreement to an arbitrator for final decision. The arbitrator, in effect, creates a contract for the parties. Rights arbitration, on the other hand, involves the submission of a dispute over the meaning of a collective bargaining agreement to an arbitrator for final decision. Rights arbitration, also known as grievance arbitration, is much more common than interest arbitration.

Voluntary labor arbitration is a judicial proceeding presided over by one or more arbitrators who are empowered by the parties to render a final and binding decision. This general definition requires further examination because it contains some important points about the process. First, the parties to the dispute mutually select the arbitrator. Selection is a matter of choice, not chance, a matter of agreement, not coercion. Second, the parties agree to be bound by the arbitrator's award. If the award is "bad", the disappointed party generally has no practical recourse except to comply with the award.

In 1960, the United States Supreme Court decided three private sector cases that have come to be known as the "Steelworkers Trilogy". These cases established some principles concerning arbitration that have great weight, even in public sector disputes. The Court held that agreements to arbitrate should be construed as broadly as possible and that doubts should be resolved in favor of coverage. In other words, courts should grant an order to proceed to arbitration unless the subject matter of the dispute has been clearly and expressly excluded from the terms of the valid arbitration agreement. The Court also held that, in reviewing arbitration awards, a court should not overrule an arbitrator simply because the court interprets the agreement differently. The major limitation placed on judicial enforcement of an arbitration award was that the award must draw its essence from the agreement. The principles enunciated in the "Steelworkers Trilogy" established a strong judicial presumption in favor of enforcement of arbitration agreements and arbitration awards.

Arbitration is, in effect, a private judicial system in which the parties select their own judges and set their own rules of procedure. While, in a given case, a particular law or court ruling may impose some limits on the power of an arbitrator to issue an award, the arbitrator's power is generally limited only by the terms of the agreement of the parties who submitted the dispute to arbitration. The arbitrator could, unless expressly prohibited from doing so, reinstate an employee who has been dismissed, make an award of back pay, award a promotion, or establish a work practice. In short, arbitration is a serious business and the arbitrator is a person of great power. Neither the process nor the selection of an arbitrator should be taken lightly.

Commentators have noted the following advantages of the arbitration process as a model of dispute resolution:

- it is more economical than strikes or litigation;
- it is more responsive to the needs of the parties;
- it affords a timely hearing by a neutral who has experience or special knowledge in the area of dispute;
- it is an informal process; and
- because it is a voluntary process any award by the arbitrator will normally be promptly enforced.

While these are real benefits of the arbitration process, the parties can easily prevent their realization. They can delay the hearing, make it legalistic rather than informal, and refuse to comply with an arbitrator's award, thus forcing the other party to seek compliance in court.

Arbitration proceedings are generally commenced by a submission or a demand. A submission is an agreement by the parties to arbitrate disputed issues. The submission agreement will describe the dispute and will either name the arbitrator or describe the selection process. The agreement may also limit the arbitrator's jurisdiction and prescribe hearing procedures. A demand, on the other hand, is a notice by one party that the arbitration clause in the parties' collective bargaining contract is being implemented. Even if a demand is issued, the parties can still make a joint submission but, unless the parties otherwise agree, the contractual provisions will govern the content of the submission agreement.

OTHER DISPUTE RESOLUTION PROCEDURES

It is in order at this point to briefly discuss some other types of dispute resolution procedures to provide further definition of the voluntary arbitration process. The most common of these other procedures are: (1) compulsory arbitration; (2) advisory arbitration; (3) mediation; (4) med/arb; and (5) fact finding.

Compulsory arbitration is imposed upon the parties. It is usually a matter of law or regulation and is most commonly used in cases involving public welfare, such as disputes involving public transportation or police and fire fighters.

Advisory arbitration may be either a matter of law or regulation or a matter of agreement of the parties. Advisory arbitration is different from binding arbitration in that the arbitrator's award is only a recommendation. It is sometimes provided that the arbitrator's award will be binding unless it is accepted or rejected within a specified period of time.

Mediation involves a mediator, a third party selected by the parties or appointed by an outside agency, who discusses possible settlements with the parties, both individually and as a group. A skillful mediator can often, through a combination of persuasion, cajolery, and coercion, bring the parties to a settlement of their dispute.

Med/arb, as the name implies, is a combination of mediation and arbitration. An arbitrator will be selected by the parties to hear their dispute in a med/arb proceeding, but the arbitrator will first attempt to mediate the dispute and will arbitrate only if mediation fails. The advantage of the med/arb process is that, if the mediation aspect is successful, the parties will avoid the issuance of a decision that could serve as a precedent for other disputes.

A fact finder is a third party neutral empowered by the parties or by an external agency to investigate the circumstances of a dispute, make findings of fact, and propose a resolution that is not binding on the parties. It is not unusual for a fact finder to be required, by law or agreement, to publicize the findings in the hope that the publicity will cause the parties to resolve their disputes.

PROFILE OF A LABOR ARBITRATOR

I previously mentioned an article entitled "Profile of a Labor Arbitrator", which appeared in the June, 1982 edition of *The Arbitration Journal*. The article updated a study published by The National Academy of Arbitrators in 1961 on the characteristics of arbitrators who handle labor disputes. The article provides an answer to the question: "Who are these people called labor arbitrators?" The article was based upon responses to questionnaires sent in the Summer of 1980 to all arbitrators on the FMCS roster.

The profile that emerged from the study indicated that the average labor arbitrator is a 58.7-year-old male with more than one college degree and with both law and economics as areas of specialization. He is more likely than not a part-time arbitrator, and, on the average, he will have had 14.2 years of experience. There is one chance in three that he will be an educator, usually from a college or university, and there is another chance in three that he will be a practicing attorney. He will handle about 20.3 cases per year and he will divide his cases between the public and private sectors.

ARBITRATOR SELECTION MODELS

An initial decision confronting parties who wish to arbitrate a dispute is the choice of a suitable arbitration model. The most common practice is the use of a single, temporary arbitrator but other common forms are the use of a permanent arbitrator, sometimes called an umpire, or the use of a panel of arbitrators.

The use of a temporary or ad hoc arbitrator is the most common arbitration model in the United States. In its most common form, the arbitrator is selected after a dispute has passed through a grievance procedure. The arbitrator is named to arbitrate a specific dispute or group of disputes, and there is no commitment to select the arbitrator again. This model permits the selection in each case of an arbitrator who has special qualifications for deciding that particular dispute. If the parties are not pleased with the decision they can choose someone else in the future. This is a more economical method of arbitration than the use of a permanent arbitrator on retainer if you have or anticipate few arbitrations.

The temporary/ad hoc model does have some disadvantages. Selection of an arbitrator after a dispute has arisen may involve as much difficulty as the dispute itself, since the parties may use the selection process to delay the hearing or to ensure that they get an arbitrator who will render a favorable award. The arbitrator who is chosen for only one dispute or a group of disputes usually will not be familiar with the general circumstances of the parties and, thus, may require more background information, which may increase the cost of the arbitration proceedings. In addition, the awards may lack consistency when several arbitrators render interpretations of the same contract.

In the permanent umpire model, an arbitrator or group of arbitrators is selected for a specified period of time, such as the length of the collective bargaining contract, to hear whatever cases arise during the period. Permanent umpires may be selected case by case or on a rotating basis. Permanent umpires are most often used by parties who expect a large number of arbitrations.

The use of a permanent umpire saves time in the selection process. Because the neutral and the parties become familiar with each other, it results in consistent and predictable decisions, which tend to promote a stable relationship and encourage the resolution of disputes through negotiation. Advance selection of a permanent umpire promotes careful consideration of the arbitrator's qualifications. The permanent umpire's familarity with the circumstances and bargaining history of the parties tends to reduce the amount of time spent hearing disputes and rendering awards, which, in turn, keeps the overall cost of arbitration down.

The permanent umpire model is not without its disadvantages. The difficulty in finding enough mutually acceptable arbitrators is one such disadvantage. In addition, when an arbitrator is readily available, the parties may be too quick to turn to arbitration to resolve disputes. Also, they may be required to pay the umpire a retainer fee, even if no disputes are submitted to arbitration. Finally, the permanent arbitrator may acquire a bias in favor of one side over time.

One example of contract language creating a panel of permanent arbitrators is found in the faculty collective bargaining agreement in my own system. A similar provision appears in the faculty collective bargaining agreement of the State University System of Florida:

> Representatives of the Board and the Union shall meet within 90 days after the execution of this Agreement for the purpose of selecting an arbitration panel of no more than 15 members. Within 14 days after receipt of a notice of intent to arbitrate, representatives of the Board and the Union shall meet for the purpose of selecting an arbitrator from the Panel. Selection shall be by mutual agreement or by alternately striking names from the Arbitration Panel list until one name remains. The right of the first choice to strike from the list shall be determined by the flip of a coin. If the parties are unable to agree to a panel of arbitrators, they shall follow the normal American Arbitration Association procedure for the selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not a member of the Arbitration Panel.

In selecting arbitrators to serve on our panel, we looked for arbitrators in surrounding states who were familiar with higher education. There are currently six arbitrators on our panel. The arbitrators selected for the panel have all had extensive higher education experience as faculty members or administrators. The arbitrators are paid on a per diem basis for any arbitrations they are selected to hear. To date, we have been able to select arbitrators for hearings without delay; in most instances only one discussion has been required. We feel the panel has served our needs well at minimal expense.

The panel model involves the selection of a board (usually three members) to hear all cases arising during a specified period of time. All members of the board hear all disputes. A common form of this model is to have one member of the panel selected by the union, one by management, and one neutral selected by the union and management members. The neutral serves as chairperson of the panel and usually joins with one of the other members to produce a decision. In one variation, the neutral member is given the exclusive right and responsibility of making the final decision.

The use of a tri-partite panel gives parties a better chance to keep the neutral informed of their real positions. In such a model the neutral may get valuable advice and assistance from the partisan members. When unanimous, the awards of a tri-partite panel tend to be much more acceptable than the awards of a single arbitrator. The use of a tri-partite panel, however, is more costly than the use of a single arbitrator, whether temporary or permanent. It simply will take more time to conduct the hearing and render an award when three people are involved than when only one arbitrator is used. In addition, when a tri-partite panel is used, the neutral may be forced to compromise his or her best judgment to get a majority vote when such a vote is required.

ARBITRATOR SELECTION PROCEDURES

Most collective bargaining agreements have a clause that outlines the procedure to be followed in selecting an arbitrator or providing that the parties will abide by the rules of an appointing agency such as FMCS or AAA. It is important for drafters of collective bargaining agreements to remember that, when the agreement provides a selection process, some mechanism must be provided to resolve deadlocks between the parties over selection of an arbitrator.

The FMCS and AAA selection procedures are similar. They both involve the following steps:

1. The parties jointly notify the agency of a need for an arbitrator.

2. The agency sends each party a list of names (usually five or seven) with basic biographical information about each arbitrator.

3. The parties cross off unacceptable names.

4. The names left are numbered in order of preference.

5. The lists are returned to the agency, who compares them to determine who has the lowest combined number and, therefore, is most acceptable to both parties.

6. If the parties cannot decide, a second set of names will be sent upon request, or the agency will make the appointment, if the parties so desire.

7. The agency notifies the individual who has been selected and a suitable hearing date is arranged.

Even if the parties do not use FMCS or AAA, they can use a similar selection procedure or they can tailor one to their own particular environment or needs.

ARBITRATOR SELECTION CRITERIA

Because it is a private creation of the parties, there is no ideal or model arbitration for all controversies. Since arbitrators are given the power to issue final decisions, which generally are not reviewable by a court, their selection should be of utmost concern. There has been, however, relatively little research into the standards or criteria parties use in selecting arbitrators to hear disputes.

In general, unless required by the parties, an arbitrator need not possess any special educational or technical training. Commentators who have considered the subject have agreed that the important attributes to look for in an arbitrator are impartiality, integrity, ability and expertise, and acceptability.

By impartiality, commentators mean the ability to hear all of the evidence with an open mind and to make a decision based on the arbitrator's own best judgment and assessment of the evidence. The fact that an arbitrator may have represented labor or management in the past is not necessarily a reflection on an arbitrator's impartiality. Arbitrators have a duty to disclose to the party all facts that bear on a selection process such as a business, a personal or financial connection with either party, or an interest in a particular result. The arbitrator is not required to disqualify himself or herself, but must give the parties sufficient information for them to determine whether the arbitrator is qualified for their purposes. If a party knows of the partiality of an arbitrator and fails to object in a timely fashion, the objection may be held to have been waived. By acceptability, the commentators mean such things as the arbitrator's ability to control the hearing and the quality and timeliness of the arbitrator's decisions.

A variety of sources provide information about arbitrators. When FMCS or AAA are used, the agency provides a brief biography of each arbitrator on the selection list. In addition, arbitrators on FMCS and AAA panels have been investigated before their acceptance. If an arbitrator is a member of the National Academy of Arbitrators, it is an indication of high professional esteem by fellow arbitrators. This is not, however, a necessary criterion, since membership in the National Academy of Arbitrators is relatively limited. Other labor or management representatives are good sources of information about potential arbitrators. There are also commercial directories, such as the *Directory of Arbitrators*, published by the Bureau of National Affairs (BNA), and *The Directory of Labor Arbitrators*, published by The Labor Relations Press. In addition, selected past awards by an arbitrator may be reviewed in such publications as *Labor Arbitration Reports*, published by BNA, or *Labor Arbitration Awards*, published by Commerce Clearing House (CCH).

If FMCS or AAA is used as a source of arbitrators, you can ask for the names of parties previously served by the arbitrators for the purpose of getting an evaluation. You should find out how many times the same parties have chosen a particular arbitrator since repeat orders are a strong endorsement.

In checking with other parties who have used particular arbitrators, you should contact as many as possible of the people who have arbitrated cases before the candidate. A recommendation from the loser or a criticism from the winner should be given special weight. The arbitrator should, however, be judged more on the quality of his or her work than on how many cases were decided for management or for labor.

Walter E. Baer, in his 1974 book, *Labor Arbitration Guide*, suggests that the following questions be asked of parties who have had experience with a potential arbitrator:

1. How soon was the award submitted after the closing of the hearing?
2. What was the issue decided?
3. Did the arbitrator consider only the relevant contractual provisions or was weight given to other matters, such as past practices and bargaining history?
4. Did the arbitrator follow the concept that management rights are residual and that all rights and privileges of managing the business continue to reside with the employer, except to the extent that they have been abridged or compromised in the agreement?
5. How did the arbitrator conduct the hearing? Was it informal or legalistic?
6. Did the arbitrator prefer a transcript and the use of a court stenographer or take notes?
7. Did the arbitrator ask many questions?
8. In the opinion portion of the award were the arbitrator's remarks pertinent and on point or extraneous to the issue?
9. Were the opinion and award clear and understandable?
10. What were the charges? Were they considered reasonable in light of the length and complexity of the hearing?

The responses to these questions can provide valuable assistance in the selection process. The questions may be divided into three categories: questions about a potential arbitrator's timeliness and suitability for the issue in dispute; questions about the way a potential arbitrator is likely to conduct the hearing; and questions about the quality of the potential arbitrator's powers of reasoning and understanding and about his or her billing practices.

The responses to questions 1-4 will provide you with information about the potential arbitrator's timeliness and suitability for the issue in dispute in your case. The response to question 1 is obviously pertinent to the issue of the arbitrator's timeliness. The response to question 2 will enable you to judge the similarity of the issue decided to your issue. The responses to questions 3 and 4 will enable you to determine whether the arbitrator takes a limited or expansive view of the role of an arbitrator. The responses will help you determine whether the arbitrator is a strict constructionist and the arbitrator's views on management rights.

The responses to questions 5-7 will be helpful in ascertaining how the potential arbitrator is likely to conduct the hearing. If the arbitrator is described as "legalistic", it could mean the arbitrator applies strict rules concerning the introduction of evidence. This would not necessarily be an advantage, since the arbitration process is designed to be more informal than a court proceeding. The use of a transcript or court stenographer will add to the costs of the proceeding, but the expense may be worthwhile if an appeal is anticipated in the event of an adverse decision. If you are told that the arbitrator asks many questions, it could mean (a) the parties did not do a good job of presenting the case, (b) the case was interesting to the arbitrator, or (c) the arbitrator dominated the hearing and did not allow the parties to adequately present their cases. If it is the latter reason, this obviously will be a point of concern.

The responses to questions 8-10 will speak to the quality of the potential arbitrator's powers of reasoning and understanding and to his or her billing practices. If the arbitrator is described as missing the point in his or her awards, or as rendering awards that are unintelligible, look elsewhere even if the arbitrator is generally viewed as biased toward your side. This view was more pungently stated by one of the respondents to the Rezler/Petersen study described below: "If it is an asinine award, whether we win or not, the arbitrator becomes a persona non grata. If he does it *for* me in one case, he can do it *to* me in another."

A file of such information should be maintained for future reference each time an arbitrator is used.

Two recent studies concerned standards or criteria used by practitioners in selecting arbitrators. The studies provide useful empirical data on this important, but often neglected, aspect of the arbitration process.

One study, entitled "Arbitrator Acceptability: Factors Affecting Selection", was described in an article by Eric W. Lawson, Jr. in the December, 1981 issue of *The Arbitration Journal.* Thirty arbitrators on the panel of the Buffalo office of the New York State Mediation Board (SMB) and 36 labor and management representatives who had used the services of SMB in private sector cases were asked to respond to a questionnaire about standards used in arbitrator selection. The study participants included locals of large national unions and employers with large multi-state installations, as well as small independent unions and small businesses.

The factor rated most important in terms of arbitrator acceptability in the study was name recognition or familiarity with the arbitrator's work. In general, both groups agreed that sex and ethnic characteristics of arbitrators were unimportant (female arbitrators, however, did not always share this view). Labor and management representatives rates formal education fairly high, while the arbitrators surveyed rated "real world" experience higher. Both groups gave attorney arbitrators a slight advantage over non-attorney arbitrators.

The other study, entitled "Strategies of Arbitrator Selection", was reported in Volume 70 of BNA's *Labor Arbitration Reports* and was conducted by Professors Julius Rezler and Donald Petersen of Loyola University in Chicago. Their findings were based on in-depth interviews of 13 labor representatives and 13 management representatives regularly involved in arbitrator selection. The study was directed toward the qualifications or personal traits that the parties considered when they selected arbitrators they had not used before and those they considered important to the continued acceptability of an arbitrator.

The Rezler/Petersen study found that "experience", as measured by such factors as the number of years serving as an arbitrator, the number of cases handled, the number of awards published, or membership in the National Academy of Arbitrators, was the primary selection criterion used in picking an arbitrator for the first time. The authors noted that not all issues require experienced arbitrators. They referred to earlier studies which found little difference in the awards of experienced arbitrators and third-year law students in straight contract interpretation cases, which are uncomplicated by subtle industrial relations considerations, and in discipline and discharge cases. Some issues, however, such as arbitrability, discrimination, or technical issues involving job classification, clearly would require an experienced arbitrator.

The Rezler/Petersen study found that there were relatively few issues where the arbitrator's professional background was crucial, although lawyers were generally preferred for arbitrability disputes, economists for interest disputes, and industrial engineers for technical issues such as job classification disputes.

The Rezler/Petersen study also looked at factors bearing on the continued acceptance of arbitrators who have already been selected at least once. The most important consideration in the view of the respondents to the study was the award of the arbitrator. By this, the respondents meant the quality of the award. Was it fair and reasonable? Was the decision based on specific facts? Was it consistent? Was it pertinent? These factors were rated as much more important than the decision itself. The way the arbitrator conducted the hearing was also an important factor in his or her continued acceptability. The respondents indicated that they preferred arbitrators who conducted an orderly hearing and who seemed to understand the environment of the parties. They wanted the arbitrator to be fair and impartial and to display integrity and common sense. They were concerned that the arbitrator pay attention and not unduly intervene in the hearing.

CONCLUSION

As with most things in life, arbitrator selection is more than it seems to be. It is not like Churchill's description of Russia, a riddle wrapped in a mystery inside the enigma. There are some hidden complexities. The potential arbitrants have some choices within choices: to choose the right arbitrator model, the right selection proceeding, or the right selection criteria for their dispute.

The choices are a function of the inherent flexibility of the arbitration process and it is the flexibility, informality, and economy of the process that make it an alternative worth considering when faced with an employment dispute.

In collective bargaining settings, it is important to remember that grievances and arbitrations are not aberrations; they are merely a continuation in another forum of what the parties began when they sat down at the bargaining table. No collective bargaining agreement will cover every possible contingency. A mechanism such as the grievance and arbitration process is necessary to ensure that the parties receive what they bargained for and to fill in the inevitable gaps in their agreement. Success in a labor arbitration will depend to a large extent upon success at the bargaining table in negotiating an agreement that is clear.

Clarity will not eliminate disputes, since disputes often have nothing to do with contract language, but the clearer the agreement, the more likely it is that an arbitrator's decision will reflect the intent of the parties.

Finally, a basic point to remember in any setting is that the best way to settle a dispute is by negotiation. Arbitration and its kin are last resorts to be used only if negotiation fails. Unfortunately, this point is often forgotten in the heat of the moment. Issues of principle, spite, animosity, or political considerations sometimes push this common sense point to the back of the stage.

It may sometimes be necessary to initiate a third party proceeding such as arbitration to make negotiation more attractive to the other party, but even while doing so you should be alert to the possibility of a negotiated settlement. Settlements reached through constructive negotiations are usually preferable to those imposed by an outsider, even an outsider voluntarily and mutually selected by the parties.

REFERENCES

Abrams, Roger I., "Negotiating In Anticipation of Arbitration: Some Guide Posts for the Initiated", *Case Western Law Review 29* (Winter 1979): 428-449.

Baer, Walter E. *Labor Arbitration Guide.* Homewood: Dow Jones Irwin Inc., 1974.

Britton, Raymond L. *The Arbitration Guide.* Englewood Cliffs: Prentice-Hall, Inc. 1982.

Elkouri, Frank, and Elkouri, Edna Asper. *How Arbitration Works* 3rd edition. Washington, D.C.: The Bureau of National Affairs, Inc., 1973.

Herrick, John S., "Profile of a Labor Arbitration", *The Arbitration Journal* (June 1982): 18-21.

Lawson, Eric W., Jr., "Arbitrator Acceptability: Factors Affecting Selection", *The Arbitration Journal* (December 1981): 22-29.

Rezler, Julius and Petersen, Donald. "Strategies of Arbitration Selection", *Labor Arbitration Reports* 70. Washington, D.C.: Bureau of National Affairs, Inc., 1978, pp. 1307-1320.

Roth, Herbert F., "Choosing An Arbitration Panel", *Litigation 6* (Winter 1980): 13-15, 54-55.

Smith, Russell A.; Edwards, Harry T.; Clark, R. Theodore, Jr. *Labor Relations Law In The Public Sector.* Indianapolis: The Bobbs-Merrill Company, Inc., 1974.

Staudohar, Paul. *Grievance Arbitration In Public Employment.* Berkeley: Center for Labor Research and Education, Institute for Industrial Relations, University of California, 1977.

Trotta, Maurice S. *Arbitration of Labor Management Disputes.* New York: AMACOM, 1974.

Weisberger, June Miller. *Grievance Arbitration In Higher Education: Recent Experiences With Arbitration Of Faculty Status Disputes.* Washington, D.C.: Academic Collective Bargaining Information Service, 1978.

Administrative Responsibilities for Labor Relations Decisions

By David Kuechle

Faculty unions coexist with unions representing support personnel at many colleges and universities. Often the responsibilities for managing institutional relationships with the unions is divided, with the vice president for academic affairs or provost heading that part of the administration that deals with faculty unions and the vice president for administration responsible for the support services. In large institutions someone other than the vice president usually deals with day-to-day matters involving labor management relations, operating within the framework of general policies set by the president and the board of trustees.

There is no ideal structure for dealing with labor management relations in colleges and universities. There are some important principles, however, which ought to guide the labor relations decision-making process. In this paper I will try to identify those principles and demonstrate why they are important.

The case that follows is disguised. It took place in a public university where employees were organized by several unions representing support staff personnel. The case itself centers on the university's maintenance department. It illustrates how labor relations issues, which may seem benign in their inception, can cause administrative strains if the college or university has not thought out general policies regarding labor-management relations and designed an appropriate administrative structure to implement these policies.

GREAT LAKES UNIVERSITY

On Sunday, March 30, a fight occurred in the Rathskeller of Great Lakes University's School of Business Administration between a student and a maintenance electrician employed by the university. The two men grappled for several seconds, rolling on the floor and throwing punches until they were pulled apart by two students and another maintenance man who were standing by when the fight broke out. Aside from a bloody nose and puffed left eye, the student who had been fighting emerged unscathed. The maintenance man had a torn shirt and a badly bruised right hand. Both were angry and were ready to resume the fight if the peacemaking bystanders would only let them go.

A series of incidents over the past several weeks had given rise to this outburst, and the events that followed it threatened to throw the entire university into turmoil, perhaps even to shut it down. They involved the university's president, the vice president for administrative services, the dean of the school of business administration, a senior professor, the superintendent for maintenance services, several students, a journeyman electrician, and the general secretary of the industrial trades council, a union representative.

BACKGROUND

Great Lakes University is a multicampus institution located on the outskirts of a major U.S. Great Lakes port city. The Rathskeller at the School of Business Administration was a popular gathering spot for students from all over the university. It was open to everyone and was frequently used by members of the faculty, secretaries, and other employees in the university's support staff. The pugilists were Douglas Jones, a second year MBA student, and George Madison, a journeyman electrician who had been employed by the university since 1974. Jones had been a defensive halfback on the University of Michigan football team in 1978. He was six feet tall and weighed 195 pounds. Madison, a 6'2", 220-pound man, age 27, was himself and accomplished amateur boxer. Madison was well-known among students and sometimes attended their parties on the campus. Known as a generous spender, he frequently bought rounds of drinks for everyone sitting around the Rathskeller's semicircular bar. Although married, Madison sometimes dated women he met at the Rathskeller.

George Madison was one of two full-time electricians assigned to the Business School. He was a member of the International Brotherhood of Electrical Workers (IBEW), one of the craft unions representing the university's maintenance and service personnel. His immediate supervisor was Patrick Mulloney, Superintendent of Maintenance Services at the Business School. Mulloney reported to the university's Vice President for Maintenance Services, Frank Garrow.

The fight between Madison and Jones had probably been brewing for several weeks. Jones and his fiancee, Margaret Vaughn, also a second year MBA, often came to the Rathskeller, sometimes together, sometimes separately. Vaughn, a striking woman, had attracted Madison's attention one day, and he offered to buy her a drink. She accepted, and the two had a friendly conversation. Vaughn became especially interested in Madison when she learned that he was the union steward for maintenance personnel at the Business School. She explained that she hoped to work in labor relations and personnel administration when she graduated, and hoped to be an arbitrator.

This initial meeting between Madison and Vaughn led to several others, always in the Rathskeller in the late afternoon and usually accompanied by a few drinks. Madison and Vaughn were sometimes joined by other students, and Madison soon became something of a folk hero – an attractive, bright individual who was about the same age as the students but who, 11 years earlier, had dropped out of high school to become an apprentice electrician, then had worked his way through the apprentice program until, in 1974, he became a journeyman and went to work for the university. By 1980 he was earning close to $25,000 a year, $20,000 on his job with the university and another $5,000 on free-lance after-hours work.

The following week, on Saturday, March 15, Margaret Vaughn and Douglas Jones went to the Rathskeller after attending a movie. Madison was there. Vaughn and Jones sat at a table with a few friends, and Madison went over, pulled up a chair, sat down, and yelled at the bartender to bring every one a drink. He then engaged Jones in a conversation. According to Jones, they talked about many things – including football, boxing, race relations, and, eventually, Margaret. Eighteen days later both men tried to recall the conversation, and their versions were somewhat different.

According to Jones:

> "Madison 'inferred' that women in general, and Margaret in particular, were not loyal to a single person. He said further that Margaret and he had dated frequently and that he intended to spend the night with her. I told him to 'bug off' – to get out and stay away from Margaret – that she didn't want to see him."

Madison recalled the conversations as follows:

> Jones said to me 'I understand you've been seeing Margaret lately. I just want you to know that she doesn't like it and that I don't either. I suggest you bug off!' I got up and walked away."

During the following week Margaret Vaughn asked for an appointment with her instructor in a personnel management course she was taking, Professor Nicholas Herman. She told Herman that the matter was personal, but she wanted to tell someone, fearing that more serious things might happen. Then she recounted the incidents regarding George Madison, Douglas Jones, and herself. Herman agreed that, while university employees have a right to frequent the Rathskeller during lunch breaks and off hours, they have an obligation to treat students with respect.

Professor Herman asked Vaughn what, if anything, he ought to do. Vaughn, in response, said "I don't think there's anything you can do, but I wanted to talk to someone, to let you know that there could be trouble."

On Saturday, March 29, the Rathskeller was less crowded than usual. It was the end of spring vacation week at Great Lakes University, so many of the students had left the campus. Some, especially those with term reports due, stayed on, and these included Margaret Vaughn and Douglas Jones. Margaret and Douglas stayed at school to work on a paper for their

Business-Government Relations course. They broke off Saturday night to have a beer in the Rathskeller.

Upon arrival at the Rathskeller they sat down at a table. George Madison was standing alone at the far end of the bar. When he saw Margaret and Douglas, he ordered and paid for a pitcher of beer and took it over to the table where Vaughn and Jones were seated. Then, according to Margaret, Madison said: "This is my party! Why don't you get lost." Douglas said, "We've got business here, and I think you're not part of it."

There is some difference regarding what happened next. All three, however, reported that Jones got up, grabbed a chair from another table, and slid it between where Madison and Margaret were seated. Jones stook in back of the chair and said something to Madison. According to Margaret he said: "Thanks for the beer, George, but we're busy trying to finish a report, and I wish you would leave. You can take the pitcher with you." Madison said he heard Jones say: "I'd like you to leave and stay away from this place. You're not wanted here." Whatever was said, Madison got up from the table and went back to the bar for a few minutes, then left the Rathskeller.

The next day, Sunday, was unusually quiet in the Rathskeller. George Madison was working on overtime that day. At noon Madison walked over to the Rathskeller with Frank Joyce, a carpenter who had been assigned to the same job. Joyce and Madison had often worked together and were long-time acquaintances. The two went to the cafeteria counter to pick up sandwiches, and Madison noticed Douglas Jones sitting at a table in the cafeteria with two other students. Jones looked up, Madison looked back, and the two men stared at each other at a distance while Madison went through the cafeteria line. As he was paying for his lunch at the cashier's desk, he poured a cup of coffee, then he looked back toward Jones, and Jones was still staring at him. So Madison put down his cup of coffee, left his sandwich on the counter and went over to Jones' table. Jones got up and moved toward Madison, saying, "Is something wrong?"

Madison, in response, said "Nothing that a fist in the mouth wouldn't solve."

Jones said, "Do you want to come outside?"

Madison, without saying anything, moved toward the door.

It's not clear exactly what was said next. At least three witnesses were there, but no one could state who threw the first punch. Within seconds the two men were on the floor, slugging at each other. Jones' companions leapt up and tried to break up the fight, and they were joined by Frank Joyce, the carpenter. Eventually the three succeeded in breaking up the men, two of them holding Jones and telling Madison to back off.

AFTERMATH

At about 3pm on Sunday, Thomas Hotchkiss, Dean of the Great Lakes School of Business Administration, received a phone call at his home. It was James Robertson, President of the Student Association. Robertson, apologizing for calling Hotchkiss at home, told him about the fight, relating the story told to him by Doug Jones and his two companions. He traced the events of the last several weeks and said that he, Robertson, and a few other students would like to meet with Hotchkiss as soon as possible on Monday – that the situation was hot, and students were in an uproar about George Madison's conduct. Hotchkiss, after listening to the account said, "In my opinion, this man Madison ought to be removed from the campus tomorrow morning."

Hotchkiss agreed to meet with the students at 2:30 pm on Monday and said that in the meantime he would contact Patrick Mulloney, Madison's supervisor, and ask him to suspend Madison until further notice.

The next morning, Monday, March 31, most of the students had returned from their vacations. Word passed quickly about the fight the day before, and many students who frequented the Rathskeller said they were not surprised. Some related other instances where Madison had gotten into near-fights because of making advances to women, sometimes doing things that were interpreted as obscene. All of this was passed on to Dean Hotchkiss at the 2:30 meeting, which was attended by James Robertson, Douglas Jones, Margaret Vaughn, and six other students.

Hotchkiss told the students that he had talked to Patrick Mulloney that morning and that Madison was not working that day, having been promised the day off the week before in return for working Sunday. Hotchkiss said, however, that he was scheduled to meet with Mulloney and Madison the next morning, Tuesday, April 1. He essentially repeated to the students what he had said to Robertson the day before:

"This man Madison ought to be removed from the campus."

Hotchkiss urged the students not to take matters into their own hands, promising to meet with them again on Wednesday. They set a 4:00 time for the Wednesday meeting.

The next morning, Tuesday, Patrick Mulloney came to Dean Hotchkiss' office. He said he had talked to Madison about the Sunday incident and that Madison wished to apologize to the students. According to Mulloney, however, Madison claimed that Jones had been the aggressor and that he (Madison) was only defending himself. The rest of the conversation, according to Mulloney, went something like this:

> Hotchkiss: "I don't for a minute believe that your man was defending himself. I had a dozen students in here yesterday, threatening to take things into their own hands, and they were all in essential agreement on the facts. We can't have that man mixing with our students. He's a menace. In fact, I think he has psychological problems."
>
> Mulloney: "Wait a minute, Tom. You haven't heard his side of things. I suggest you hear him out before coming to any conclusions."
>
> Hotchkiss: "I'm prepared to do that. Bring him over here."

At about 10:30 Mulloney returned to Dean Hotchkiss' office along with George Madison. Hotchkiss then told Madison that although they had never met, he had come to know Madison through the students. Mulloney related the rest of Dean Hotchkiss' words, as follows:

> "If all I have heard is only 25 percent true, we don't have any need for you around here. Students are calling you a 'troublemaker'. We had our share of student riots in the 1960's and people like you set them off. I suggest you start looking for a job elsewhere, now."
>
> Madison: 'Mr. Dean, there is another side to the story, and I think you ought to hear it."
>
> Hotchkiss: "Tell it to Pat (Mulloney). I have other matters to attend to. Good Day."
>
> Mulloney: "Tom, I think we'd better talk about this further, there are some things you don't know, and I'm afraid you've overstepped your bounds."
>
> Hotchkiss: "Look. I've heard enough. The President doesn't need any more problems than he's got already. These students are ready to stage a demonstration, and I intend to prevent it."

Mulloney and Madison left the Dean's Office, both of them incensed that Hotchkiss had apparently taken the students' stories as true and was unwilling to listen further.

PROFESSOR HERMAN'S INVOLVEMENT

Following the meeting between the students and Dean Hotchkiss on Monday morning, Margaret Vaughn knocked on Professor Herman's door. He was in his office and listened while Vaughn related the incidents of the weekend. She said the students were upset about Madison's conduct, but they did not want to cause him to be fired. "If he would just stay away from the Rathskeller everything would be all right," said Vaughn.

Following Vaughn's visit, Professor Herman called Dean Hotchkiss. He said that students had informed him about the Madison situation and offered his assistance to Hotchkiss, if he wanted it, in trying to resolve the situation. Hotchkiss thanked Herman and invited him to attend Wednesday's 4:00pm meeting.

THE GRIEVANCE

Following their meeting with Dean Hotchkiss, Mulloney told Madison to take the rest of the day off. Mulloney said that Hotchkiss had no authority to decide who works and who doesn't in the service areas, but he didn't want to risk a confrontration between Madison and the students, at least for the rest of the day. Madison, obviously angry, said "I'll take off, but I expect to be paid for the day."

> Mulloney: "We'll talk about pay when you get back. Come and see me first thing in the morning."
>
> Madison: "I think I'm getting a bum rap. Nobody's heard my side so far."

Mulloney: "Cool it, George. I agree you've probably gotten a bum rap. But do me a favor, and clear out. And don't hang around the Rathskeller for a few days."

Madison: "O.K. You're the boss. I'll see you tomorrow."

Madison checked out, but he went directly to the union hall, looking for Clarence Miller, General Secretary of the Industrial Trades Council. Miller represented the electricians and other unionized craft employees at Great Lakes University, including carpenters, pipefitters, painters and machinists. All had joined together for negotiations and had a single collective bargaining agreement.

Madison found Miller in his office and said he had a grievance, that he had been sent home for the day by Mulloney and that Dean Hotchkiss, in a kangaroo court earlier that day, had virtually fired him. He told Miller about the fight on Sunday and about earlier instances involving Margaret Vaughn, Douglas Jones, and other students in the Rathskeller.

As steward for the Business School maintenance crew, Madison had frequent contact with Miller, and each man had a certain fondness for the other.

After hearing Madison's story, Clarence Miller called Mulloney. He asked Mulloney if Madison had been suspended or discharged. Mulloney said he didn't know, that he had told Madison to come and see him the next morning. Miller, in turn, said "I hope you know you're sitting on a powder keg. If you take action against Madison, we're going to take some sort of action against the university."

Mulloney replied "I understand. Keep your shirt on, will you? I want to work something out, if I can. Madison's in big trouble, I hope you know. There's more than one side to this story, and I don't think any of us know it all yet."

Miller told Mulloney he would stay in touch. In the meantime, Miller said he was going to see Frank Garrow.

MEETING BETWEEN CLARENCE MILLER AND FRANK GARROW

At 3:00 that afternoon, Clarence Miller went to the office of Frank Garrow, Vice President for Administrative Services. Under the collective bargaining agreement, Garrow represented the university at all third level grievance meetings involving the unionized support staff. This was the final step before arbitration. Since Miller represented the union members at that stage, these two men had developed a close working relationship over the years. Probably no two people were better acquainted with union-management relations at Great Lakes. While they often argued with each other, they also had great mutual respect. Most of their problems were solved before formal grievances ever got to the third level. Garrow, in the spirit of accommodation, gave priority to Miller whenever he asked for a meeting.

Miller: "We've got a problem, and frankly I'm worried. This one could blow us out of the water."

Garrow: "Are you referring to George Madison?"

Miller: "Yes. I gather Mulloney's talked to you already."

Garrow: "No, the President called. He said a group of students had met him on the walkway at lunch time and asked what we intended to do."

Miller: "What did he do?"

Garrow: "In short, I guess he told them he didn't know about it. So they 'briefed' him – saying that George Madison had been getting drunk in the Rathskeller, making obscene remarks to students, and that he got into a fight on Sunday with one of the students. At any rate the President told the students he'd check into it, that he was sure it would be handled in an appropriate manner. Then he called me, very upset. Memories of the 1969 student strike still stick in his mind and, as you know, the alumni are here this week. It's money-gathering time, and the President doesn't want any demonstrations."

Miller: "Mulloney told Madison to go home for the day – to check with him tomorrow. As I understand, Dean Hotchkiss got involved and told Madison this morning to start looking for another job."

Garrow: "What does Hotchkiss know? It looks like we've got a little organizational problem here."

Miller: "I hate to ruin your day, but I thought you had better know."

Garrow: "Thanks. I'll be in touch."

As Miller was getting up to leave, Patrick Mulloney entered Garrow's office carrying three cups of coffee. He asked Miller to stay. The three men talked for the next half hour, Miller making it clear that any disciplinary action against Madison would likely result in a sympathy action by others, especially if the discipline was severe. Mulloney noted, "George is a good worker and nice guy. But sometimes he turns from Jekyll to Hyde. He's got a fierce temper, they tell me, especially after a few drinks."

In the presence of the other two men, Garrow called Thomas Hotchkiss, Dean of the Business School, to learn about Hotchkiss' role in the situation. Dean Hotchkiss acknowledged that he had met with Mulloney and George Madison earlier in the day and that he had told Madison he ought to start looking for another job. Garrow asked whether Hotchkiss had formed his opinion regarding Madison's employment solely on what the students had told him. Hotchkiss said he had learned enough from the students to make it clear to him that whatever story Madison might have, he should not work at the university. According to Garrow, Hotchkiss compared the situation to a department store customer complaint department: "In any well-run store the management assumes that the customer is always right. The students are our customers," said Hotchkiss, "and they've demanded that Madison be discharged."

Hotchkiss said that he had scheduled a meeting with the students at 4:00pm the next day, Wednesday, and he invited Garrow and Mulloney to attend. He also reminded Garrow that the university's President was aware of the situation.

After talking to Dean Hotchkiss, Frank Garrow related the conversation to Miller and Mulloney. The men decided on a plan of action. First, Miller would call or visit Madison and tell him to stay away until Thursday morning and that he would be paid for all day Tuesday and Wednesday. Miller agreed that the situation was serious, and said he would tell Madison that this was so, cautioning him not to talk to others about it.

Second, Garrow would call Professor Nicholas Herman and seek his assistance. Herman, a senior member of the Business School faculty, had worked with Garrow and Miller on earlier occasions. Garrow did not know that Herman had already offered his assistance and that he intended to be at the 4:00pm meeting the next day in Dean Hotchkiss's office. Upon learning this from Herman, Garrow felt somewhat relieved, knowing that Herman might be able to keep Hotchkiss from making commitments as the alleged spokesperson for the university.

MEETING OF WEDNESDAY, APRIL 2, 4:00 PM

The meeting took place as scheduled. Those in attendance were Dean Hotchkiss, who sat at his desk, Patrick Mulloney, Professor Herman and three students: Douglas Jones, Margaret Vaughn and James Robertson, President of the Student Association.

Professor Herman took charge. He asked the students to recount, as best they could, all of the events that led to the fight on Sunday, March 30. Mulloney was obviously nervous about this, but he had little choice except to sit and listen.

Margaret Vaughn did most of the talking, but all three students participated in relating the facts, as they saw them, to Mulloney and Herman. Then Herman told the students that Madison had not been at work that day and would be reporting the next morning. He asked what they thought the university should do. All three said they thought he should be fired. This, of course, contradicted what Vaughn had told Herman on Monday.

Mulloney then interrupted saying, "There are two sides to the story. We're convicting a man without even letting him be heard!"

It was then about 5:15pm. Dean Hotchkiss got up, put on his coat, picked up his briefcase and said, "I'll leave the office to you. Please turn off the lights when you leave," and he walked out.

Vaughn, responding to Mulloney, said, "George Madison is a nice enough person, most of the time. But he should not be around students. Can't he be assigned somewhere else?"

Mulloney: "How can you assign someone to a job in a university where he's not around students?"

Robertson: "You can at least tell him to stay out of the Rathskeller."

Mulloney: "He's on his own time when he's at the Rathskeller. The place is open to everyone. How can we discriminate against him?"

Professor Herman then interrupted. Addressing himself to the students, he suggested that Madison be discharged. This way Madison would go away, there would be no more fights in the Rathskeller and no more encounters between him and the students, and everyone could go home to supper. "But," said Herman, "we're intelligent people, and we ought to be willing to discuss this at least for a few minutes, to explore some other alternatives. Bear in mind, Madison is a married man. He has six years of seniority here and is a highly-respected technician. We're asking Pat Mulloney to do something that could ruin the career of a promising man."

The students rose to the challenge, and for the next hour they participated in an exploration of workable solutions, short of discharge or transfer. Mulloney participated as well, with slightly less enthusiasm. Finally, at about 6:45, the parties came up with a tentative plan for solving the problem. It contained four elements:

1. Madison would apologize to the students, Jones and Vaughn, for his actions of Saturday and Sunday and would give them assurances that there would be no further incidents.

2. Mulloney would inform Madison that any further "incident" between himself and a student would result in his discharge.

3. Mulloney would advise Madison not to frequent the Rathskeller for the next two months, after which time the present MBA class would have graduated. Jones and Vaughn expected to be among the graduates.

4. Madison would return to work on Thursday.

After a certain amount of prodding from Professor Herman, Mulloney agreed to present the proposal to Madison. Mulloney said he was reasonably convinced he could get Madison to agree, because he knew that Madison himself was worried about being discharged. The four-point plant might be a welcome alternative, especially if it did not involve a loss of pay.

The next morning Mulloney, in the presence of Clarence Miller, presented the plan to Madison, not telling him that it had been formulated by the students. Both Mulloney and Miller pointed out that, while they realized the whole series of incidents had two sides and that Madison hadn't voiced his, the probability of student unrest was high if he didn't accept. Miller, in turn, said to Madison that if he wanted to grieve he could, that the union would carry the case to arbitration, if necessary. "But," said Miller, "you're not losing any money, and maybe a loss of a little face isn't too bad when the stakes are this high."

Madison agreed, and this information was later conveyed to Dean Hotchkiss, Vice President Garrow, Professor Herman, and the President. Hotchkiss, who had left the Wednesday meeting early, called Mulloney and congratulated him, saying "Pat, it's been a pleasure to work with you on this. It's good to know we can hammer out our problems together."

Mulloney thanked him, but his relief was only temporary. On Friday morning, April 4, 1980, Mulloney received the following memorandum.

GREAT LAKES UNIVERSITY
MEMORANDUM

April 3, 1980

TO: Patrick Mulloney
FROM: Thomas Hotchkiss, Ph.D.

I want to confirm this morning's telephone conversation.

As I said this morning, I wanted you to know how grateful we in the Graduate Program at the School of Business are to you for your thoughtful and careful handling of the recent series of incidents concerning the member of the maintenance crew and several of our students. Both the President and I feel that you could have not been more helpful and cooperative, and we are very grateful and highly appreciative for all the assistance and the considerable number of hours you have invested toward solution of this problem.

I now believe that the solution consisting of the maintenance man's apologies to each of the students, his assurance to you and to them that future incidents would result in his being dismissed from the university, adds up to a good solution with one possible concern remaining.

That concern is the one that the President and I share; namely, that because of the erratic behavior of the maintenance man in question, we would like to have you discuss his behavior with Dr. Jim Morrison, Director of the University Health Services, and arrange for the maintenance man to be interviewed and thereby certified by competent medical staff. I realize that this may create a new and difficult problem for you, but as I mentioned this morning, I do feel that this is important, and so does the President.

Again with thanks for all your efforts in this problem.

Yours very truly,

Thomas M. Hotchkiss, Ph.D.
Dean, School of Business
Administration

cc: President
Vice President - Academic

COMMENTARY

Great Lakes University had an administrative structure in place for dealing with labor-management relations among support staff personnel. There were several separate unions, but these unions had joined forces to negotiate a single collective bargaining agreement with the university. Clarence Miller, General Secretary for the so-called Industrial Trades Council, represented them in bargaining and in day-to-day relationships with the university's administration.

The case does not describe the contract governing the support staff. The parties have acted, however, as though it contained standard management rights, grievance, and discipline clauses stating, among other things, that management had the right to discipline or discharge members of the bargaining unit for just and proper cause. We learn from the case that the contract had a grievance procedure, something that is also standard. Frank Garrow, Vice President for Administrative Services, represented the university at the third step of the grievance procedure. There was a fourth step, arbitration. That, too, is standard in most collective bargaining agreements.

Presumably, the contract contained a no-strike, no-lockout provision. This barred union members from striking during the contract term and, theoretically, channeled grievances that could, in some cases, stimulate strike action through an orderly procedure agreed upon by the parties themselves.

There were other parts in the structure. One of them, also standard, involved the first level supervisor. In this case, Patrick Mulloney was that person. Mulloney, Superintendent of Maintenance Services at the Business School, reported to Garrow and was the direct supervisor of George Madison, the electrician.

Beyond the structure itself were a set of beliefs held by the key persons in the organization, which cemented the structure together. The case describes these, in part, in reference to the meetings between Clarence Miller and Frank Garrow. These men had great mutual respect. They tried to alert each other to problems before those problems escalated and to solve them before they became formal grievances. This meant that Miller worked with his members and Garrow with his supervisors to try to work out amicable solutions. Neither man wanted a job action to occur. Both were concerned about fairness within the context of a well-disciplined work force.

It should be clear that structures themselves do not create good labor-management relationships. Rather, it is the people who implement that relationship and the principles and beliefs that guide their actions. Any labor-management relationship can be described broadly in terms of its place on a continuum, with conflict on one end and cooperation or codetermination on the other. From one day to another and from one incident to another, the position of parties on the conflict/continuum may move one way or the other, but in a mature relationship its position on the continuum will remain fairly constant. As personalities responsible for administration change, the parties learn to work with each other, and relationships eventually stabilize.

It is possible to imagine what might have happened at Great Lakes University if there had been a conflict-type relationship between the Industrial Trades Council and the university. Clarence Miller, on hearing about Madison's meeting with Hotchkiss, might have filed a grievance on the spot. The contract provided a grievance procedure, and there was ample evidence from Madison's story alone that he had a legitimate grievance, that he did not deserve to have been sent home, with or without pay.

- He had a fine work record.

- The fight with a student, if it took place, must have been at least partly the fault of the student.

- The fight had occurred during Madison's lunch hour and was the accumulation of a series of incidents between Madison and several students, all of which took place outside of working hours.

- Rules and regulations of the university did not restrict, but in fact encouraged, interaction between members of the staff and students.

- There was no semblance of due process in the hearing before Hotchkiss.

- Mulloney, in sending Madison home for the day, stated himself that Hotchkiss had no right to decide who worked and who did not work.

In some organizations, the filing of a grievance would have set off a series of meetings wherein various parties to the events were called upon to state their sides of the story. We can be sure then union leaders would have required the testimony of Dean Hotchkiss and various students who were involved. They might even have called for the appearance of the President if they believed his possible involvement in Hotchkiss's instructions to Mulloney on April 3rd would have required Madison to be interviewed by the Director of the University Health Services.

It seems clear that a formal grievance may have had consequences almost as disagreeable as an outright walkout by members of the maintenance workers. The contractual structures provided for that, however, and if Clarence Miller believed that the university administrators would only bend under the pressure of a grievance he might have chosen that route. The route was, of course, still available to him. Labor-management relationships that are dictated by rules, regulations, and contract language, and in which unions file grievances as a matter of course whenever a member complains, can be referred to as "containment" relationships. Each side "contains" the other by holding the other strictly to the words and phrases of the contract or other documents surrounding the relationships.

Rather than file a grievance, Clarence Miller went to Frank Garrow's office. The case indicates that these men had an "accommodative" relationship. This suggests that rather than sticking to rules, regulations, and structures laid out by the contract, they would sometimes bend the rules, or at least explore that possibility, to reach a solution that met everyone's objectives.

When he came to Garrow's office on Monday afternoon at 3:30, Miller learned that Garrow had only recently been informed of the situation. Miller also learned that Garrow was angry about Hotchkiss's involvement. Herein lies the crux of the problem. Although the support staff, headed by Garrow, worked within a fairly comfortable framework for dealing with labor relations situations, the framework, and the practices and beliefs that held it together, were either not known or not shared by people responsible for the academic side of things – Dean Hotchkiss, in this case.

In colleges and universities, often there is a tendency for academic officers to look upon the two main components of their organization as independent, unrelated operations, to treat the academics as members of the chosen elite and members of the support staff as subordinates to this elite. This is sometimes reflected in a president's relationship between the academic vice president and the vice president for administrative services. While these people may appear to be equal on the organization chart, the academic vice president is often looked upon as a little bit more equal. One college president, in referring to his administrative vice president, said he measured the effectiveness of the support staff and the vice president in charge by the lack of complaints from members of the faculty.

Many colleges and universities have structures, backed by attitudes, that are similar to those at Great Lakes University. It is not unusual for presidents to devote most of their attention to the academic side of things, trusting their administrative vice presidents to turn their side of things so that the academic functions can be carried out smoothly. Academic managers are obligated, however, to make sure that the structures and attitudes underlying the management of support staff personnel are known throughout the university.

In this case, when Dean Hotchkiss received a phone call from the President of the Student Association on Sunday afternoon he should have been aware of the possible consequences to the university when he said: "In my opinion, this man, Madison, ought to be removed from the campus tomorrow morning."

As it was, Hotchkiss, acting either out of ignorance or arrogance, persisted first in making near promises to the students that he had no authority to fulfill, then in holding a meeting wherein the students, aided by Professor Herman, prescribed a set of remedies for Madison without either Madison or his union representative being in attendance. And then, after Garrow and Mulloney had apparently been able to cool the situation, Hotchkiss prescribed a visit for Madison to the Director of Health Services.

Patrick Mulloney, the Superintendent, bore some responsibility in this chain of events. It could be argued that Mulloney should have blown the whistle early, as soon as he learned about what had happened. He could have, and perhaps should have, refused to bring Madison to Hotchkiss's office on Monday morning. Later, he might have been advised to stay away from the 4:00pm meeting on Wednesday. Mulloney, with the backing of Garrow, might have told Hotchkiss that this was his responsibility, not Hotchkiss's, and that he would handle it. It is understandable why Mulloney did not do that. In the first place, he would risk appearing to be uncooperative with the Dean, and second, Mulloney needed access to the students to hear the complete story before deciding what discipline, if any, to administer. He might have had difficulty obtaining such information without the cooperation of Hotchkiss.

Perhaps most important, the role of the president needs to be considered. After all, he or she may stand to lose more than anyone if ongoing conflicts between unions and managers is endemic to his or her administration. The President was wise to invest responsibility in competent faculty members and support staff personnel. Frank Garrow, with Clarence Miller, was able to keep the lid on Madison, at least temporarily. And Professor Herman, acting as mediator, succeeded in cooling down the students, reducing their demands to a reasonable, saleable package.

Then, however, the President somehow became a party to a sequel that transcended nearly everyone's imagination. Dean Hotchkiss's letter of April 3 to Patrick Mulloney gave instructions to Mulloney, apparently in the name of the President, to do something that was probably illegal, certainly improper, and possibly could reactivate the powder keg.

Following receipt of the letter from Hotchkiss, Mulloney, accompanied by Garrow, called on Professor Herman to tell him what had happened and ask for his advice. Aside from trusting Herman, the two men believed he would have influence in convincing Hotchkiss and the President that this request was improper. Professor Herman, in turn, suggested that he, Garrow, and Mulloney should visit Dr. Morrison, Head of the University Health Services. Morrison, on reading the letter, said that he would refuse to participate in the scheme suggested by Hotchkiss. He said there was no evidence that Madison was ill and that it would probably be illegal to force him to submit to an examination. "Furthermore," said Morrison, "My job is to treat patients when they come to me – nothing more. Their medical records are confidential and will remain that way. It is not my place and would be a violation of my duties to the patient to provide Dean Hotchkiss with excuses for taking responsibility himself.

Armed with this information, Professor Herman met with the President, then with Dean Hotchkiss. He told them about his conversation with Dr. Morrison and apprised them that if they persisted in this request they almost certainly risked a serious labor-management confrontation, which they could lose. Fortunately, Dean Hotchkiss's letter of April 3 never fell into the hands of George Madison or leaders of the support staff union.

Several principles can be derived from this experience. Most important among them is the need for chief executive officers to establish clear lines of communication between members of the academic side of things and the support staff. President Charles Ping of Ohio University did this through a Policy Council. The Council consisted of the President, the Provost, and three Vice Presidents: The Vice President and Dean of Students, the Vice President and Business Manager, and the Vice President for University Relations.

President Ping believed in shared decision-making among members of the Policy Council, wherein they were required to interact and share responsibility for all decisions that affected university policy. Every day, all members of the Council met for one half hour in the President's office. These meetings provided touching points so that members of the council were constantly aware of each other's problems and could act as consultants to each other in their solution. Members of the council exchanged correspondence, concerns and ideas, seeking guidance and assurance from each other and accepting group responsibility for making important decisions dealing with goals and implementing policies for the organization.

According to President Ping, the daily meetings provided a far more meaningful and productive use of time than a weekly meeting scheduled for three or four hours would do. "Whatever the issues," said Ping, "weekly meetings are usually ponderous, always lasting the maximum time and often wasting everyone's time."

During contract negotiating time with unions representing university employees, a negotiating team would be established at Ohio University. No one from the Policy Council was a member of the team, but the team's chief negotiator communicated with the Council through the appropriate Vice President. In the case of support staff contract negotiations, this would be the Vice President and Business Manager. The Council itself provided the negotiating team with broad guidelines, and the team had authority to negotiate an agreement within those guidelines – maintaining daily two-way communication with the Policy Council.

If a Policy Council like Ohio University's had been in place at Great Lakes University at the time of the Madison case, Frank Garrow or the Vice President of Academic Affairs most likely would have brought up the issue at the Monday, March 31st meeting. More importantly, all members of the Council would have been aware of the potential impact of the situation on the university, and responsibility for solving the problem could have been clearly established and communicated to the people who were most concerned. Ohio University's Policy Council illustrates the concept of an entire organization working together to accomplish jointly shared objectives, the administrative staff working with, not against, the faculty, and the faculty represented by Deans and the Provost, understanding that their knowledge and expertise is limited. In labor-management relations, more than any other area, the potential for damage to an organization is greatest if there is no system for sharing administrative responsibilities.

Effective Contract Administration

By Daniel J. Julius

There is an anecdote about the late Prime Minister of Israel, Golda Meir, and the late U.S. President, Lyndon B. Johnson. The story goes that Johnson was relating the difficulties inherent in being president of over two hundred million people. "Yes," replied Golda warmly, "but consider how difficult it is to be president of two and one-half million presidents!" So too is the case in academe. The union steward, by virtue of a Ph.D. in geology, considers himself or herself an authority on contract interpretation - no matter that he or she did not participate in negotiations. Recently, in a round of bargaining involving skilled craft employees, I listened incredulously to a mechanic "automotive diagnostician" who, without flinching, announced that he too could run the physical plant because, "I have some budgeting experience." It is prudent to assume that regardless of the atmosphere of negotiations, differences over the intent, meaning, and application of the contract will make themselves known immediately following contract ratification. To a lesser extent, this continues for the duration of the agreement by self-appointed authorities.

At the outset of any discussion on contract administration, it is worth emphasizing that no approach, design, strategy, or plan will succeed unless those responsible for this function are sensitive to the many internal constituencies who truly believe they possess a stake in the mission of the University and, therefore, in the labor relations process. Beyond this, effective contract administration depends on the practitioners' ability to secure the understanding and support of three important audiences; executive management, middle managers and first line supervisors. The first because they reinforce and make legitimate an internal management system for contract administration; the second due to their critical role in the daily administration of various institutional divisions, and the third because their behavior has an immediate and dramatic effect on the grievance process.

It is essential that the entire management team be cognizant not only of their own roles and responsibilities in regard to collective bargaining, but of the interdependence of their actions on each other. Effective contract administration demands that the academic and non-academic sides of the house recognize the importance of communication and coordinated action. To the union that represents secretaries, the director of the Applied Social Science Research Institute is no less a manager then the Assistant Plan Director. The remainder of this chapter will outline the responsibilities of these three constituencies with respect to contract administration.

EXECUTIVE MANAGEMENT

The implementation of an internal management system initially requires consideration of the questions listed below. The results of such deliberations must be communicated to all management personnel and be reflected in the management structure.[1]

1. What is the most effective strategy for implementing an internal management system for contract administration?

2. What individual shall be responsible for providing guidance on contract administration issues to first line supervisors and other management personnel?

3. In systemwide units, what individual on campus shall be responsible for communication with the (centralized) labor relations office?

4. With regard to grievance administration, who shall be the president's designee at each level of the grievance procedure? Shall the same individual serve this function for academic and support staff contracts? (This individual is charged with hearing and responding to employee grievances at the

appropriate formal level of the grievance procedure.)

5. What internal or external checks can be instituted so that grievance responses at each formal level are consistent and technically sound?

6. What is the most effective strategy to ensure that contracts will not conflict with various campus practices and policies?

7. Who shall review the contract(s) to assess if any formal campus procedures or practices require continuation, termination, or revision.

8. How will such required or necessary changes in procedures or practices be implemented and then communicated to management and, if appropriate, the union.

9. What internal procedure can be designed to evaluate whether informal practices, so prevalent in academe, should become established policy or should be continued in an informal mode.

To executive management falls the obligation to support a working administrative system for contract administration. It is especially important that individuals who have the responsibility for contract administration at various administrative levels be identified. Effective contract administration does not always necessitate the overhaul or termination of existing policies and procedures. Once contracts are ratified, management must determine whether existing or prior operating procedures are viable under new or previous labor agreements. If necessary, management must promulgate new arrangements to accommodate the terms and conditions of the contract. Executive management sets the tone for all managers in the organization. The attitudes manifested will be reflected in the actions of subordinates.

MIDDLE MANAGERS

The involvement in the collective bargaining process by middle managers is difficult to gauge and has been largely ignored in the literature on collective bargaining in higher education. Yet, experience dictates that if deans and directors are not familiar or comfortable with their rights, duties, and responsibilities in relation to the unionized work force, the contract will not be administered effectively.

Depending on the particular institutional setting, middle managers are the individuals assigned to bargaining teams, the president's designee at various levels of the grievance procedure, and the people appointed to serve on campus or system-wide task forces or committees that formulate and recommend to the president administrative policies and procedures. They are the group responsible for the actions of first level supervisors. A breakdown in the collective bargaining process can be, more often than not, a breakdown in dealing with campus administration, particularly middle managers.

Initially, middle managers must be brought, or enticed, into the collective bargaining process. This is important because it is not unusual for this group to perceive themselves as the big losers in the unionized environment. These perceptions have a basis in reality. Unionization has redistributed power. Decisions are forced upward, away from departments and divisions to the central administration. The consultation process, so critical to the manner of conducting business and which, prior to unionization, was informal, tacit, and customary, has been replaced with procedures that are formal, explicit, and contractual. The advent of collective bargaining has brought more people into the decision-making process. Middle managers are now more accountable for decisions that, before bargaining, could be sent back to committees for further deliberation. Now, reliance on formal authority is greater and external reviews of internal decisions are more frequent. One result has been formalization of policy, attention to fine procedural detail, consistency of treatment in evaluations and promotions. This has resulted in less authority for the dean or director.

The above notwithstanding, it is not possible to administer the collective bargaining agreement without the support of middle management. Their familiarity with the contract will enable them to provide support to the labor relations practitioner during and after negotiations. This knowledge and participation should be reflected in the actions of subordinates, usually first-line supervisors, who must administer the agreement. Extensive training sessions for middle managers should be conducted before and after negotiations. These individuals must be provided with an approximation of the limits and opportunities of managing in the unionized university as well as information on the subtleties of contract language.

FIRST LINE SUPERVISORS

Time spent in preparation for negotiations, careful drafting of contract language, and wide distribution of the correct interpretation of contract language may be wasted if the contract is not properly administered by first-line supervisors. In many cases the supervisor's account of an event later becomes the basis for management's action, even the entire theory of a case. An incorrect interpretation of contract language or the inability of the supervisor to record the precise details of an event can later be used or misused by a third party in deciding upon a contract dispute. In this respect, sloppy contract administration by first-line supervisors can result in an erosion of management prerogatives even though such prerogatives were guarded jealously at the bargaining table. While there are no hard and fast rules that guarantee the contract will be administered properly, the labor relations practitioner must, at a minimum, insist that knowledge of the following is provided.

An Understanding of the Union Steward's Role

The union steward is elected or appointed to a position of trust by fellow employees. Supervisors should know that stewards may be obligated, for legal or political reasons, to adopt a stance on a grievance with which the steward may not personally agree. In some instances, certainly not all, stewards informally weed out borderline grievances. The supervisor must recognize the steward's right to handle grievances. A related issue concerns the definition of a grievance. All first-line supervisors must comprehend this definition. When supervisors remain oblivious or uninformed of their rights and responsibilities as well as those of union stewards, unproductive relations between the management and union may ensue.

For example, first-line supervisors (and other management personnel) may endeavor to prevent the use of or question the necessity of released time to employees for grievance processing. If usage of released time is not adequately covered in the labor agreement or enabling legislation, then a policy for released time must be clearly communicated to first-line supervisors. This can be accomplished through contract manuals or on-site training. Enlisting the cooperation of first-line supervisors by keeping them aware of their obligations is not only a demonstration of courtesy, it is a practical necessity.

The Meaning and Intent of the Agreement

Upon the conclusion of negotiations and ratifications of the contract, the agreement must be distributed to each first-line supervisor. Training sessions must be conducted to ensure that contracts are administered in a consistent and uniform manner. Nearly all contract clauses, even those that appear to be clear and understandable, are subject to interpretation. First-line supervisors should be advised that unions will test the boundaries of management's intentions (and fortitude) as the contract is administered. When questions arise regarding the interpretation or application of a particular clause, each first-line supervisor must be able to communicate with an individual who can provide authoritative guidance and accurate technical assistance. Above all, first-line supervisors must comprehend and adhere to the correct procedures for expediting employee grievances. A contract manual, which interprets the agreement, should be accessible to first-line supervisors.

No contract is written to cover every issue or situation that might arise. Often contract language is vague, general, or non-existent. Contract administration techniques must involve all the parties learning to live with the contract and with each other. Contract language need not be bent, ignored, or violated in this process. If this is the case, it suggests the contract (or relevant rule or regulation) needs to be rewritten.

The Relationship to the Bargaining Process

Management negotiators and their union counterparts strive to develop ongoing working relationships. The credibility of negotiators depends, in part, on their constituents' adherence to the terms and conditions of the contract. Such adherence may not be meaningful if internal management structures are absent or if terms and conditions of the contract are not respected by either party.

Ineffective contract administration will exacerbate relations at the bargaining table. For example, union negotiators may be obligated to address language (in prior policies or labor agreements) that is not or cannot be enforced. Union negotiators may also wish to address particular problems resulting from one individual who still insists on "doing it the way it has always been done". Of course, numerous other catalysts influence the bargaining behavior of unions. The actions of state legislators, automation or technological changes made in the work place, horizontal or vertical differentiation in the organization, competition or gains made by competing unions, promises made during organizing campaigns, who will vote for ratification, and the personal agenda of a bargaining team member all play a role. In any event, the negotiations process does not terminate upon contract ratification. Contracts are reopened and successor agreements are negotiated. Ongoing communication between the union and management on contract interpretation and grievance administration is an ever present fact of life.

In conclusion, an inability or unwillingness to implement a workable internal management system, sloppy first level supervision of the contract, or the failure of academic and non-academic administrators to communicate and coordinate actions, will result in difficulties at the bargaining table and in less flexibility to resolve grievances. The labor relations practitioner must be a champion of the dictate that the alternative to effective contract administration is protracted, destructive, and expensive labor disputes.

ENDNOTES

1. The author gratefully acknowledges the contributions of colleagues at the California State University in the writing of the section.

PART FIVE:

Selected State Experiences

Bargaining in multicampus public systems is complex. In New York and California, for example, unionization occurs in college and university systems where state appropriations run over billions of dollars, students number in the hundreds of thousands, exclusive agents represent units of 15,000 or more employees, and Council of Presidents meetings are formal affairs attended by 30 or so individuals, nearly all holding the title of Vice Chancellor or President. In the California State University system, where the northern and southern campuses are close to the Oregon and Mexican borders, respectively, it is not uncommon for an employee relations specialist to travel a thousand miles to settle one campus grievance.

Collective bargaining in the City University of New York, a system located entirely in New York City, is as intricate as that found in major U.S. corporations. The system is comprised of 20 two-year and four-year campuses, including a law and medical school, and has many bargaining units, one of which consists of 15,000 full and part-time faculty. Although the numbers are smaller in Pennsylvania or Massachusetts, the political and economic forces that condition and mold the environment in which bargaining occurs are no less complex.

The contextual factors that nurture and sustain unionization in all multicampus state systems are similar. For example, institutional funds are controlled by the governor and state legislature. Leaders of public sector unions often know as much about proposed or actual appropriations to the university system as the chief financial officer. Substantive negotiations can occur over layoff procedures or employee rights to due process, but rarely occur over wages and salaries.

Centralization lends itself to collective bargaining. For example, decisions over wages, hours, and terms of employment that effect an entire system workforce are quite naturally made in centralized offices. Unions that represent employees in systemwide units endeavor to negotiate with managers in those offices. In unionized systems, bargaining team members rarely establish ongoing working relationships with their counterparts. They interact with each other in one forum during the entire year - at the bargaining table. This is another reason why collective bargaining in multicampus systems is often more formal and more adversarial than bargaining in smaller organizations.

The presence of legislators and parameters set forth in enabling legislation are common denominators in unionized multicampus systems. Complex structures and political environments have fostered many interesting alignments of bargaining agents. For example, faculty at the California State University (19 campuses) are represented by California State Employees Association, National Education Association, and American Association of University Professors. The faculty at Florida State University System (nine campuses) are represented by NEA and American Federation of Teachers. The faculty at the University of Hawaii (nine campuses) are represented by AAUP and NEA. The New Jersey State College System faculty (eight campuses) are represented by AAUP and NEA. The New Jersey State College System faculty (eight campuses) are represented by AFT and NEA. In the City University of New York (20 campuses), faculty are represented by AAUP and AFT. The Pennsylvania State College and University System (14 campuses) faculty coalition consists of the Association of Pennsylvania State College and University Faculty, AAUP, and AFT. Employees at smaller or single unit institutions are rarely represented by mergers of exclusive bargaining agents. For a comprehensive listing of all institutions with exclusive bargaining agents, see: Joel M. Douglas and Carol Rosenberg, Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education (New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, CUNY) 1983.

Institutional and demographic factors provide insight toward understanding unionization in multi-campus systems. Of greater importance is enabling labor legislation. Two of the chapters in this section examine unionization in states where enabling legislation was recently passed – California and Illinois. Each of the authors either served as chief spokesperson or played an important role in the development and implementation of administrative structures to accommodate bargaining in a multi-campus system.

Dr. Caesar J. Naples explores the preparations a multi-campus system must undertake in order to bargain effectively with employees in systemwide units. The article also focuses, in a frank and critical way, on the role of the personnel officer in collective bargaining.

Mr. Thomas M. Mannix provides a comprehensive analysis of collective bargaining in the University of California, the most prestigious public university system in the U.S. The chapter offers an excellent commentary on administrative changes necessitated by enabling labor legislation and an affirmative vote for unionization.

Ms. Sandra L. Harrison writes on collective bargaining in Illinois, where enabling labor legislation was sanctioned in 1983. She discusses the advantages and disadvantages of bargaining without the protective umbrella of a labor statute.

How to Organize the Administration of a Multi-Campus System for Bargaining

By Caesar J. Naples

When a university faculty choose to unionize and demands to bargain collectively with the administration, the institution is faced with a significant test. Faculty collective bargaining challenges the university's ability to respond in an organized and coordinated manner and requires the combined and cooperative efforts of the governing board, the chief executive, the budget planners, and the academic officers, as well as institutional researchers and the employee relations professional. While this is no mean feat when attempted on a single campus, collective bargaining in a multi-campus system creates seemingly endless combinations and permutations that appear to defy rational resolution.

This chapter explores the necessary preparations administrators in multi-campus systems must undertake before bargaining with employees in systemwide units. It discusses the considerations required for these preparations, as well as the training and utilization of new and existing groups, offices, and individuals. It also looks at a key function, the personnel office, in a frank and critical way, to assess the role of the personnel officer in collective bargaining. The observations are equally applicable to staff bargaining, where differences are important, an effort was made to identify them.

Universities often regard collective bargaining purely as a personnel matter. While the impact of collective bargaining on the personnel function is enormous, the impact on the academic side of the house is also significant. Most issues of collective bargaining – salaries, appointment, evaluation, promotion, retention, tenure, sabbatical leaves, etc. – are routinely catalogued in the university's lexicon under "personnel matters", but the impact of the changes that may accompany collective bargaining pervade the university. For example, tighter restrictions on the tenuring process can significantly limit the discretion traditionally enjoyed by academic departments in selecting their colleagues. Aside from the specification in a bargained agreement of shorter timetables within which to act, a limitation on the materials and evidence that can be used and the likelihood that the process – if not the substance – of the academic judgment will be tested in the grievance procedure represent a dramatic departure from the traditional way an academic department functions. Its personnel, procedures, reasoning, and conclusions will be scrutinized by people from within and outside the university. Recordkeeping will be different since more documentation, both of process and of judgment, will be necessary to illustrate and establish what has occurred. Academic decision-making will take more time for an already harassed chair or dean.

Let's take another example: part-time employees. Faculty unions frequently seek to limit or restrict the university's ability to hire or retain part-time, non-tenure-track faculty. The rationale for this stance is to provide more job security to full-time employees and reduce the administration's discretion in matters such as promotion and retention. (Part-time employees traditionally have not earned tenure or civil service status, have not participated in all fringe benefits available to full-time employees, and have represented the areas of greatest ebb and flow as the university balances its budget by reducing or increasing part-time employees.) As unions clothe themselves in the banner of gender equality (i.e., seek to improve the benefits and job security of part-time faculty, who are in large measure, female) their demands at the bargaining table are difficult to resist. A unions' successful drive to reduce the number of part-timers, or to limit the time a part-time employee may be kept on the payroll without earning tenure, will mean that a significant management budgetary tool will be lost. If these bargaining implications and others like them are not appreciated early in the process, or preparation is not made to deal with them, valuable time will be lost and errors will be made that could have been avoided.

early in the process, or preparation is not made to deal with them, valuable time will be lost and errors will be made that could have been avoided.

Further complicating the situation is the fact that administrators will be called upon to develop systemwide positions on issues that were before addressed by the component campuses, perhaps at the departmental level. In all likelihood, each entity has developed a different response and believes its own answer to be best for itself. Not only must the system answer problems unfamiliar to it, therefore, but these answers must supplant the differing responses already in place, which are probably functioning reasonably well.

It is part of the logic of systemwide collective bargaining that, often, perfectly good local policies be replaced by a single systemwide one. The rationale may be that the union perceives an advantage in supporting one policy over another. Or distinctions may be feared to cause differences so that a kind of equal protection problem is posed, compelling the union to ensure that portions of its constituency are not treated disparately. There are cases, however, where local policies may not be functioning well. The point is that the systemization process will commence for one reason or another.

How does a multi-campus system select a single position on an issue from among the many practices extant on the campuses? University leaders who wish to avoid undesirable standardization that can stifle innovation and creativity will be required to find systemwide solutions that will provide for flexibility in dealing with diverse administrative styles and institutional structures.

ORGANIZING MANAGEMENT

The multi-campus university system will immediately be faced with the challenge of planning for collective bargaining. While it is possible to bring together six or even 10 presidents, provosts, or personnel officers to discuss problems, involving 10, 15, or 20 institutions in anything more than a superficial gathering is quite complex. Yet, failure to provide for involvement of principal administrators from each campus can have negative consequences. Many union demands stem from specific problems that occur on campus. The involvement of campus administrators in the development of the university's response can enhance the changes of an accurate and knowledgeable response. Furthermore, it is useful to have the most expert advice that can be obtained in responding to union demands. Finally, once bargaining is concluded, it is essential to have a cadre of campus personnel who understand the collective bargaining process.

THE COLLECTIVE BARGAINING ADVISORY COMMITTEE (CBAC)

An advisory group that will play a key role in the collective bargaining process must be convened. I suggest this group comprise 10 to 12 campus administrators including presidents, vice presidents for academic affairs, vice presents for administration, deans, and personnel/employee relations officers. It is desirable that all campuses in the system be represented on the Collective Bargaining Advisory Committee. This may not be possible if the system is too large. If the advisory committee becomes too large, however, it is unlikely to function cohesively. Efforts should be made to appoint individuals who are respected by their colleagues and who will bring to these deliberations the best thinking of their offices. While their role is not solely to represent the interests of their own campus committee members, suggestions should be acceptable at home. Their salient perspective, however, should be from the office they hold; i.e., a president's viewpoint, that of a vice president for administration, etc. A full range of viewpoints will be helpful and will lead to the most useful advice.

Members of the Collective Bargaining Advisory Committee should have access to colleagues throughout the system for the purpose of discussing specific provisions or obtaining advice. The committee should be chaired by the system officer responsible for the collective bargaining function. The chief negotiator should sit on the committee while the employee relations office provides staff assistance. Other system executives should occasionally attend the committee meetings to familiarize themselves with the issues and take part in discussions involving specific areas of responsibility. Of course, these executives will also have the opportunity to discuss these matters in executive staff meetings.

The CBAC can be augmented as the need for special expertise requires. Specific matters may be referred to subject task forces (e.g., an architect, a safety officer, and a fiscal officer might comprise a committee to analyze union demands, recommend policy, and suggest a response on parking problems or OSHA). Occupational committees (such as classification or retirement specialists) may also be formed. The CBAC is an important component in a successful collective bargaining program. If it functions well a major obstacle to effective decision-making will have been overcome.

A training workshop/retreat where committee members discuss collective bargaining should be conducted. Committee members should, for example, understand the entire process including the legal framework for collective bargaining, the scope of bargaining, the process and techniques of negotiations, the politics of unions, impasse resolution mechanisms, ratification, unfair labor practices, contract administration, and grievance processing. The better the committee members understand collective bargaining, the more valuable they will be to the system.

Secondly, subject matter areas covered in typical collective bargaining agreements must be discussed thoroughly. Specific goals in each area should be identified and a bottom-line position identified. This bottom-line represents the greatest concession the bargaining team is empowered to make and still be assured of the full support of the CBAC. This confidential document (which I call the "black book") should not be regarded as the complete agreement. Indeed, from management's perspective it may represent the least desirable contract. Rather, it is a collection of perimeters in each of the areas described.

At least one member of the CBAC should sit on a bargaining team. This experience will be a useful practicum to continue the education of members of the CBAC. Committee members may also assist negotiators to respond in ways consistent with the intent of the CBAC. I would not hesitate to press the CBAC members into service, telephoning other CBAC members to sound them out on various matters during bargaining.

THE COUNCIL OF PRESIDENTS

All of the issues involving important policy determinations should be brought before the systemwide council of presidents. The presidents who sit on CBAC can assist in identifying those issues that need not be discussed with the council of presidents. The best advice is to err on the side of too much consultation. As the presidents become more familiar with the process and the participants, they will come to rely on CBAC for many decisions.

The employee relations office should provide an abbreviated training program for the council. This program will provide presidents with a better understanding of the process they face and enable them to provide better assistance to the bargaining team. Each item in the black book should be thoroughly discussed and modifications made to ensure the support of the presidents. During bargaining, the chief negotiator should provide progress reports to the council. Because the first round of bargaining is likely to raise presidential apprehension, these reports should be frequent and comprehensive. Later on, once a satisfactory level of understanding and trust has been achieved, the reports can be more abbreviated. No president should ever be surprised by the contents of a collective bargaining agreement.

THE ROLE OF THE GOVERNING BOARD

While presidents and other administrators must be active in the process of collective bargaining by virtue of their responsibilities to administer or to live within the negotiated agreement, the role of the governing board is not as clear. Some boards delegate the entire collective bargaining function to the system chancellor, following the model of governance prevalent in modern corporations. Others choose to keep abreast of the process but not to become deeply engaged in it. A few may decide to direct or conduct the bargaining themselves. Virtually any model can be successful.

The governing board should undergo a brief training program that outlines what can be expected as the collective bargaining process unfolds. For example, the board should be prepared for a pre-election campaign conducted by competing unions, which may include promises of benefits and possible attacks on the administration and the board. It should be stressed that employee unionization, in the public sector at least, is not necessarily a result of employee dislike of the administration or board. The reasons public employees unionize are well documented elsewhere, but no good purpose will be served if the governing board takes it personally. The collective bargaining process, with its demands, counter offers, late night meetings, and around-the-clock bargaining sessions, should be demystified for the board during the training program. Some members of the board may be accustomed to collective bargaining in their own business or industry and may come to the university with a different set of understandings. The scope of bargaining, impasse process, right to strike, and confidentiality or absence of it in public sector bargaining, should be discussed. For example, it should be stressed that the union or the employees may attempt to end-run the bargaining team and approach the Board directly. Such efforts can significantly undermine the bargaining process. The Board should agree to rebut such efforts politely but firmly and direct the concerned employees back to the bargaining table. (Without such an understanding, I hasten to add, the success of the bargaining is seriously jeopardized.) If the Board is concerned that collective bargaining can undercut its role within the administration, it should insist upon thorough and periodic progress reports. It may also wish to sign off either on the black book bargaining positions or on major policy issues identified by the system's chancellor, the council of presidents, or the CBAC.

The governing board must give sufficient authority to its bargaining team to enable it to reach agreement. Failure to delegate sufficient authority in advance will mean that the Board will become enmeshed in detailed operational policy during the bargaining. It is better, I suggest, for the Board to set or approve more general policy and permit the chancellor and presidents to set operational policy.

Since most governing boards in higher education retain the authority to ratify collective bargaining agreements, the board should be briefed regularly on the progress of bargaining to ensure its understanding of the agreement. If the negotiators need additional authority they must return to the board to seek it. At the conclusion of negotiations, the agreement should be passed to the board through the CBAC and the council of presidents. If the process has been carried out and board members have been kept informed, ratification should follow smoothly.

SETTING GOALS IN COLLECTIVE BARGAINING

Many institutions err because they believe the sole purpose of collective bargaining is to reach agreement without losing too much managerial authority. When negotiators bring back an agreement that still permits administrators to manage the institution, executive management is satisfied. Unfortunately, this is a short-sighted view of collective bargaining and may result in the loss of an opportunity to obtain needed changes in institutional operations. The university ought to set substantive goals for the bargaining process and have, as one of its aims, the attainment of as many of the goals as possible.

Setting goals is difficult because it requires a knowledge of bargaining and involvement by campus and system administrators who are not usually involved in personnel matters. As I attempted to illustrate at the beginning of this discussion, collective bargaining is likely to have a significant impact on academic planning and budget planning, along with virtually all other administrative activities in a university system. Time must be spent familiarizing executive management with the bargaining process, including the kinds of issues bargaining can and will address, the potential for change, and the ability of bargaining to prevent change as well. Each office should be encouraged to review those aspects of its operations that could be affected by collective bargaining and to discuss ways in which collective bargaining can be used to improve the status quo. For example, the fringe benefits officer should be asked to identify defects or omissions in the university's fringe benefit offerings with an eye toward addressing those omissions at the bargaining table. Academic planning officers may advise that a program may be so under-subscribed that layoffs are a distinct possibility. This suggestion may lead to careful scrutiny of existing layoff procedures and related goals that should be addressed in the bargaining process.

The executives who are responsible for the administrative functions of an institution can be viewed as the client of the bargaining team. Their needs should be a paramount goal and a significant determinant in setting bargaining objectives. Put another way, the process of goal-setting for bargaining involves a cooperative effort between the negotiators and the rest of the administration. It begins when negotiators provide sufficient training and information so that other administrators understand the limits and potentials of collective bargaining. As this level of understanding is achieved, needs can be identified and defined with the assistance of the collective bargaining experts. Occasionally, unrealistic goals will be advanced and the role of the negotiator will be to suggest more achievable objectives. During this discussion, negotiators will also be educated on the substance of matters they will be bargaining. This process will be repeated at each level of consultation: CBAC, council of presidents, and governing board. This is particularly true when goals are set by one group that may be inconsistent with those discussed by another. The process should be repeated until a clear set of objectives has been identified. While this consultative process may appear to be burdensome, it is absolutely essential to the success of the endeavor. Failure to take time with each constituent group will result in less valuable input from them at best, or alienation at worst.

CONFIDENTIALITY

Some negotiators believe that the process of collective bargaining can only be conducted in the strictest secrecy. This is incorrect. There is only one reason for secrecy in collective bargaining. It is that publication of a union or management position on any issue may make it more difficult to modify that position later. Consequently, I favor confidentiality of the bargaining process from the media until final agreement is reached. The wise negotiator, however, keeps the advisory groups, CBAC, council of presidents, and the Board fully apprised of the bargaining. One effective way to accomplish this is to send them copies of the typed bargaining minutes prepared by the administrative team. In addition to the written reports, the negotiators should meet with the advisory groups regularly to discuss the bargaining first hand.

THE ROLE OF THE PERSONNEL OFFICER

I have rarely discussed the advent of collective bargaining in a university without the personnel officers present asserting that their role is not sufficiently appreciated by the president or that others are more centrally involved in the planning for and negotiation of the collective bargaining agreement. Once the faculty agreement has been negotiated, the personnel officer is rarely the chief faculty grievance officer, although the personnel officer is often used as a resource in the processing of faculty grievances. The personnel officer is often the chief grievance officer for staff agreements but, despite the added workload, there is rarely an increase in salary, staff, or status.

Part of the reason for this phenomenon is the historical bifurcation of the academic personnel function from the staff personnel function. This is founded in the belief that the processing of documents incident to the hiring, reappointment, evaluation, tenuring, and promotion of the faculty were more conveniently accomplished in the same office that oversees the academic judgments involved in those actions. The non-faculty personnel office is frequently headed by a professional personnel officer with training and experience in one or more of the traditional areas of the personnel function: training, manpower development, recruitment, affirmative action, classification, or benefits administration. The faculty personnnel function is often conducted by a former faculty member who would like to enter higher education administration as a career change. Without special training in any sub-area of the personnel field, this individual may hold the title of Dean of Faculty or Associate Vice President for Adacemic Affairs. Despite the disparity in pertinent career-related education, training, and experience, the faculty personnel officer is often more highly paid than the nonfaculty counterpart. Additionally, in part because of the lack of experience of the faculty personnel officer in these areas, little effort is directed toward faculty development, training, or job enrichment for academic employees. Instead, these tasks are left to equally untrained department chairs, committees, and deans. In fact, so little is done in the area of career counseling for faculty members that the concept of retraining faculty members who labor in low demand disciplines is still seen as innovative and experimental.

Collective bargaining represents a significant opportunity for personnel officers to expand their contribution to the university and demonstrate their value as part of the administrative team. To begin with, personnel officers ought to become as knowledgeable as possible in the areas of faculty and staff collective bargaining. There are courses offered in most regions of the country that provide such information and training. Voluntary self-improvement in this area is certain to be rewarded, at least in enhanced job satisfaction if not in more concrete ways.

Secondly, personnel officers must recognize that the values and traditions associated with faculty personnel functions are different from those of non-academic personnel. For the staff personnel officer to work effectively with faculty requires familiarization with faculty processes, including evaluation, tenure, and promotion. Thirdly, personnel officers must recognize the importance of credentials in dealing with the faculty. A Master's degree or doctorate in public administration or higher education administration opens doors that may otherwise be closed. Finally, it is my experience that a number of personnel officers have adopted the standard response of some attorneys. When the client is seeking advice on how to accomplish a desired goal, the attorney says that it is illegal, but fails to suggest a constructive alternative to enable the client to achieve the desired end or something close to it. Personnel officers too frequently are perceived as obstacles to accomplishing a goal desired by the president, vice president, or deans. The personnel officer who can assist the executive staff in reaching its goals is more likely to be considered for further responsibilities in the area of collective bargaining.

Collective bargaining is sure to create uncertainty and ambiguity in a university. The personnel officer who assists in resolving that uncertainty and who can manage the ambiguity will see the position grow and be rewarded.

CONCLUSION

Collective bargaining requires a new cooperation and coordination within a multi-campus university system. Properly planned, the university's response can be accurate and effective and can bring the university's differing functions into a more harmonious and better functioning relationship. Administrators can work together and assist in the formulation and implementation of collective bargaining policy and the by-product can be a more efficient and effective partnership. Failure to plan for and cooperate in the conduct of collective bargaining can result in or increase devisiveness, suspicion, and less effective responses. Collective bargaining also provides an opportunity for personnel officers to enhance their value to the institution if they choose to grasp it.

The California Experience: An Unusual Law, Institution, and Approach

By Thomas M. Mannix*

The University of California has been preparing for collective bargaining for several years. The State Legislature began studying public sector bargaining legislation in the early 1970's. After appointing a committee of labor relations experts to study the phenomenon, the Legislature rejected the committee's advice and refused to adopt a general purpose statute. Instead, the Legislature opted for a piece-meal approach.

The Higher Education Employer-Employee Relations Act (HEERA), the fourth in a series of public employee statutes, extended labor relations legislation coverage to employees of the University of California, the California State University System, and Hastings College of Law. The Berman Act, as it is sometimes known, went into effect on July 1, 1979. HEERA was preceded by statutes for city and county employees, public school and community college employees, and state employees.

UNIVERSITY OF CALIFORNIA PROFILE

The University of California was founded on March 23, 1868, as a coeducational, nonsectarian, Land Grant institution. It was designated a Sea Grant institution in October, 1973. The Regents of the University of California has 28 members, four of whom are nonvoting members. Of the 24 voting members, seven are *ex officio* members who serve by virtue of other offices held: (1) Governor; (2) Lieutenant Governor; (3) Speaker of the Assembly; (4) Superintendent of Public Instruction; (5) President of the University; (6) President of the Alumni Association of the University of California; and (7) Vice President of the Alumni Association. Sixteen voting members of the Regents are appointed to 12-year terms by the Governor and a Student Regent is appointed by the Board for a one-year term. Two Regents-designates and the Chair and Vice Chair of the university-wide Academic Council (Senate) serve as the four nonvoting Regents.

The University consists of nine campuses: Berkeley, Davis, Irvine, Los Angeles, Riverside, San Diego, San Francisco, Santa Barbara, and Santa Cruz (including five medical schools and hospitals, three law schools, and more than 50 organized research units, such as the Scripps Institution of Oceanography) and three Department of Energy Laboratories (Lawrence Berkeley, Lawrence Livermore National, and Los Alamos Scientific National Laboratory). In 1981, more than 115,000 employees worked for the University of California. The Fall Quarter 1981 enrollment totaled nearly 139,000 students (98,508 undergraduates, 27,544 graduate students, and 12,648 health sciences students). The 1980–1981 budget totaled $3,748,704,000. HEERA covers all of the University of California employees at the nine campuses and the two Lawrence Laboratories located within the state.

BARGAINING PLANS

Preparing for bargaining within such a complex organization formally began with the appointment of a committee of campus and Systemwide Administration representatives under the direction of the Vice President—Academic and Staff Personnel Relations (A&SPR). The committee developed a plan, evolutionary in nature, which would be amended as experience with HEERA dictated. The plan would provide guidance for University management. Seven policy assumptions provided the foundation for the University's planning.

1. The University will continue efforts to create and maintain a working environment for employees that makes it unnecessary for them to choose collective bargaining. This is true both for academic and staff personnel. In addition to continuing and improving consultation with academic and staff personnel as individuals and in groups, the University intends to develop programs that benefit employees and that strengthen the institution's personnel system. The goals of such programs include competitive salary and benefit levels for University employees, open commu-

---

*The author gratefully acknowledges the assistance of George D. Dickinson, Manager, Labor Relations, Lawrence Livermore Laboratory.

nications within the University, broad and equitable processes for resolving employee complaints and grievances, and effective supervision.

2. As collective bargaining legislation is implemented, it will be in the best interest of the University to maintain existing relationships and to build on the existing roles of those who are involved in decision-making processes, both internally and externally.

3. It is important for the University community to have a clear understanding of the University's position on the issues that are involved in collective bargaining and of who is responsible for which activities.

4. The University cannot control the ultimate outcome of many issues of labor relations and collective bargaining since there are several other parties involved in the resolution of these issues; for example, the Public Employment Relations Board, the Department of Finance, and the Legislature.

5. Insofar as collective bargaining is concerned, the external relations of the University, with both State and Federal governments, are principally the responsibility of Systemwide Administration, rather than that of the campuses and the Laboratories.

6. A small number of bargaining units will be in the best interest of the University. Specifically, this means the formation of bargaining units according to the broadest possible geographic and occupational groups, consistent with a community of interest among the employees within the units. In all cases (except as otherwise specifically provided in the HEERA) the University's preference is for systemwide bargaining units; this preference is reflected in the relevant provisions of the law, which the University helped to influence while it was in its formative stages. A small number of bargaining units facilitates the integration of collective bargaining with other components of the University's personnel management system (e.g., classification and compensation) and dampens the whipsawing of management that often occurs when bargaining units proliferate.

7. Improved communications programs, intensified academic and staff personnel policy review, and more diligent adherence to existing policies at the operational level will be necessary in this new environment.

External Roles

The University of California concentrated on both external and internal organizational roles and relationships. External relationships included non-state funding agencies, the Department of Finance and the Legislature, the Governor's Department of Personnel Administration, and the Public Employment Relations Board.

The primary non-state funding agency involved with the University of California is the Department of Energy (DOE), which finances the Lawrence Laboratories. There has long been a detailed interrelationship between the University and the DOE. A key member of the Vice President-A&SPR's staff had been responsible for keeping DOE informed and obtaining its permission, where necessary, on personnel and salary matters. The Assistant Vice President—Staff and Management Personnel retains responsibility for liaison with the Department of Energy. The Assistant Vice President (AVP) is responsible for consultation with DOE representatives before basic management positions are announced publicly. HEERA requires that all initial proposals of exclusive representatives and of the higher education employer that relate to matters within the scope of representation be presented at a public meeting before any actual bargaining begins (Sec. 3595-a). In addition, DOE representatives are to be kept informed as to the course of the negotiations by the AVP. Depending upon the unit of employees involved in the bargaining, DOE representatives may even be asked to concur with the contract, in whole or in part, that emerges from the bargaining process.

The Department of Finance and the Legislature are deeply involved with the University's budget process. Section 3572.3-a of HEERA requires the University to "maintain close liaison with the Department of Finance and the Legislature relative to the meeting and conferring on provisions of the written memoranda which have fiscal ramifications." That same section also specifies that the University submit its requests for funding in the aggregate for all state-funded employees. It is the University's intention to fold these aggregate funding requests for salaries and benefits into existing budget processes, whenever possible. Therefore, under HEERA, the lead responsibility for contact with the Department of Finance and the Legislature remains with those systemwide administrators responsible for the University's budget process. It is hoped that by using the budget personnel for this liaison work, the relationship can be limited to one of a fiscal nature. A detailed review of proposed collective bargaining agreements by the Legislature and the Department of Finance could lead to intrusion into the governance of the University.

Liaison with the labor relations arm of the executive branch of state government is critical to the University of California. The impact of the state's contracts on the University is expected to be substantial. The Department of Personnel Administration (DPA), originally called the Office of Employee Relations, negotiates the contracts for state employees in 20 units. The Director—Collective Bargaining Services, a Systemwide Administration official who reports directly to the Vice President—A&SPR, has primary responsibility for maintaining liaison with the DPA in matters relating to collective bargaining.

The final external role involves the Public Employment Relations Board (PERB). This five-member Board, appointed by the Governor, is responsible for administering HEERA as well as the state employee bargaining law (SEERA) and the public school and community college employee bargaining law (EERA). Since EERA became law in 1976 and SEERA became effective in 1978, PERB had established rules and regulations before HEERA became effective. PERB's rules for higher education employees parallel its rules and regulations for other employees in California covered by similar legislation.

PERB's unit determination activity started in July, 1979, when the first petitions for certification and requests for recognition were filed with the agency. To date, PERB has been very active under HEERA. Unfair labor practice charges have been filed against the University by a variety of employee organizations and by individual employees. Some of these charges have been settled informally, others have gone to hearing and the administrative law judges' decisions have been accepted by the parties. In other cases, the decisions have been appealed to the Board and the Board has issued final decisions. Two or three of the Board's decisions have been appealed to the state courts.

Lead responsibility for dealing with the Public Employment Relations Board rests with the General Counsel of the Regents of the University of California. Under the Bylaws of the Board of Regents, the General Counsel has general charge of all legal matters pertaining to the University (Sec. 21.2). Representatives of the General Counsel's office represented the University before PERB as the agency was developing its rules and regulations for HEERA and presented the University's positions on appropriate bargaining units, questions of majority support, election procedures, status of supervisory employees, and the like. The Director—Collective Bargaining Services, Director—Academic and Staff Employee Relations, the Academic and the Staff Management Assistant Vice Presidents all work closely with the General Counsel's office in dealing with PERB.

Internal Roles

The University of California has developed plans and responsibilities for the internal role(s) to be played by several individual managment employees and groups. Section 3562-h of HEERA defines the Regents, including any person acting as an agent of the Regents, as an employer. On March 16, 1979, after HEERA had been signed by the Governor but still several months before its effective date, the Regents adopted the policy that the President and those of his or her staff to whom he or she may delegate such authority be designated as agents of the Regents to carry out, with appropriate consultation with the General Counsel of the Regents, the collective bargaining responsibilities of the University under the Higher Education Employer-Employee Relations Act and within policy set forth in relevant by-laws and standing orders of the Regents and other Regental policies.

The Regents receive regular reports from the President with regard to any significant labor relations developments. A subcommittee of the Committee on Finance concerned with employee relations meets with and receives reports from the Vice President—A&SPR. The Regents also have become involved in allocating monies for HEERA-related activities in the regular budget cycle and in special authorizations (see the section below on the University's Information Campaign).

The President is the chief executive officer of the University. In addition, he or she is a voting member of the Board of Regents and has been specifically delegated the responsibility and the authority to act on behalf of the Board in HEERA-related matters. As such, the President's written authorization is necessary before any proposed memorandum of understanding (HEERA-ese for contract) becomes an official University document. In many higher education systems, the governing board retains or is unable to delegate this ratification responsibility. The President routinely receives advice from the Council of Chancellors (COC) and policy recommendations are formulated by the Management Advisory Committee on Employee Relations (MAC) and forwarded to the President for acceptance.

The Council of Chancellors meets regularly with the President to discuss the entire spectrum of management issues. When HEERA-related matters are scheduled for the COC agenda, the Directors of the two Lawrence Laboratories join COC. In addition to this COC role, Chancellors and Laboratory Directors are also ultimately responsible for any local campus or Laboratory bargaining that takes place and for the contract administration aspects of both local and systemwide contracts once they exist.

The Academic Senate

The role of the Academic Senate in shared governance is protected by HEERA in several sections that preserve the Senate's responsibilities and prerogatives. Some of the specific provisions of the statute are detailed in the section on HEERA below. The Senate is not an employee organization within the meaning of HEERA and the University administration is free to consult with the Senate independent of any faculty organizing or bargaining activity that may be going on that involves members of the Academic Senate.

Advisory Groups

There are other academic and staff advisory groups within the University, such as the Librarians Association of the University of California (LAUC) and the Cooperative Extension Assembly. Several campuses have academic staff organizations that advise the campus administrations on professional and personnel matters of interest as they relate to various classes of non-Senate academic employees.

The statute allows the University to continue to consult with advisory groups on any matter that is outside the scope of representation. LAUC, the Cooperative Extension Assembly and campus-level academic advisory groups, however, do not enjoy the same statutory protections afforded the Academic Senate. The University administration is able to consult with these groups on matters within the scope of representation only for those employees who are not represented by an exclusive representative or for whom an employee organization has not filed a request for recognition or petition for certification. For those non-Senate academic employees for whom an employee organization has filed a request for recognition or a petition for certification, consultation may not occur until such request is withdrawn or an election has been held in which the employees have voted to remain unrepresented.

Staff employees also have associations on must UC campuses. The associations have a University-wide council that serves as a coordinating and communicating organization among the associations and represents the associations as a group with the Systemwide Administration on important policy matters affecting staff employees. At the campuses, the staff associations provide advice on a variety of policy and operational matters and provide a source of staff employees to serve on campus policy and working group committees. These staff associations, as a matter of University policy that predates HEERA, are precluded from representing employees in meet and confer sessions and from participating in the existing University grievance and arbitration procedures. Consultation with staff associations are restricted by HEERA to matters outside the scope of representation except for those staff employees the unions are not attempting to organize.

The Vice President—A&SPR is responsible for both the policy and the operational aspects of the University's collective bargaining activity. The Vice President—A&SPR has several department heads who report to him or her directly on labor relations matters. The Assistant Vice President—Academic Personnel, the Assistant Vice President—Staff and Management Personnel, and the Directors of Academic and Staff Employee Relations, Affirmative Action, Retirement and Benefits, and Collective Bargaining give direct support to the Vice President. The VP-A&SPR reports labor relations information regularly to the Regents subcommittee on employee relations, the President, the Council of Chancellors, and the Academic Senate. In addition, the Vice President chairs the Management Advisory Committee on Employee Relations.

Management Advisory Committee

MAC is a committee appointed by the President that provides advice and recommendations on issues raised by collective bargaining. The VP-A&SPR and the General Counsel serve as permanent MAC members. Others serve specific terms that are staggered to allow both continuity and rotation among senior Systemwide Administration officers, Chancellors, and Vice Chancellors. Currently, Chancellors or Vice Chancellors from six of the nine campuses and the Director of one of the two Lawrence Laboratories are serving on MAC. Representatives from the three unrepresented campuses and the other Laboratory are invited to participate in MAC meetings when the agenda addresses campus or Laboratory-specific issues. The Chair of the Academic Senate also attends MAC and may participate in the discussions. MAC is charged with the responsibility (1) to advise the President on policy issues raised by collective bargaining and (2) to recommend collective bargaining objectives and strategies as well as the parameters for meeting and conferring.

The Director—Collective Bargaining Services for Systemwide Administration is responsible for all collective bargaining program activities and serves as one of the staff to MAC. The Director serves as the chief negotiator for all University meeting and conferring including that which takes place at the campus or Laboratory level. Although table spokespeople will vary from unit to unit, depending on the number of units involved in bargaining at any one time and on whether the bargaining involves systemwide, campus, or Laboratory units, the Director-CBS maintains overall responsibility for the bargaining process. University policy requires that all proposed memoranda of understanding from any unit be recommended by the Director-CBS to the VP-A&SPR before the Vice President recommends same to the General Counsel and President to complete the concurrence process.

Collective Bargaining Operations Group

The CBS Director also chairs the Collective Bargaining Operations Group (CBOG). CBOG includes a representative from each campus, both Laboratories, the General Counsel's Office, and several offices within the Systemwide Administration. Each member of the group serves as liaison between the campus or Laboratory and the Office of Collective Bargaining Services and will be expected to serve as the location's table spokesperson on meet and confer issues for any bargaining that occurs at the local level. CBOG's major responsibilities include:

- considering strategies and tactics in negotiations and assessing the effect of proposals and concessions whether systemwide or local in application;
- acting as a vehicle for exchanging advice and information regarding the implementation of the University's collective bargaining policies; and
- identifying policy issues requiring consideration by MAC.

As mentioned previously, the General Counsel is responsible for preparing or approving all legal documents relating to the business of the University. Legal advice concerning labor relations is provided to the Regents, the President, the Council of Chancellors, MAC, CBOG, etc. Although members of the General Counsel's staff may not participate directly in the bargaining process by occupying a seat at the bargaining table, the office will draft or review contract proposals and advise on contract administration matters once memoranda of understanding are in place.

THE HEERA STATUTE

The University's structure and its history of dealing with employee concerns prior to the passage of HEERA greatly influenced the University's planning for bargaining. Specific sections of the statute also influenced the plan. Certain HEERA provisions are detailed below for general information and illustrative purposes. The analysis is not meant to be exhaustive but merely to highlight some of the more interesting or unusual features of HEERA.

Section 3561-c establishes the pursuit of excellence in teaching, research, and learning through the free exchange of ideas among faculty, students, and staff of the University of California as the official policy of the state. All parties subject to HEERA are required to preserve academic freedom. The principle of peer review of appointment, promotion, retention, and tenure for academic employees is preserved by Sec. 3561-b.

Section 3562-q-4 removes policies and procedures used for appointment, promotion, and tenure, evaluation procedures, and procedures for processing grievances of members of the Academic Senate, from the scope of representation. The Academic Senate, however, can place those matters within the scope of representation should it wish to do so. A potential for mischief exists between the peer review language of Sec. 3561-c, which covers academic employees, and the scope language of Sec. 3562-q-4, which covers only members of the Academic Senate. Future units, possible agents, and bargaining demands may clarify or confound this situation, especially if librarians and other non-Senate academic employees organize.

The Academic Senate of the University of California is mentioned in several HEERA sections. Section 3561-b states that the law in no way restricts, limits, or prohibits the faculty from the full exercise of any shared governance mechanisms or practices. Section 3562-q-4 gives the Senate control over the scope of representation with regard to appointment, promotion, tenure, evaluation procedures, and grievances of Senate members. Those issues are now excluded from the scope, but the Senate can change that at its will. Further, if the responsibility of the Senate with regard to those issues is withdrawn from the Senate by action of the Regents, then matters withdrawn from the Senate automatically fall within the scope of representation, whether there are any exclusive representatives for Senate units or not. Section 3571-f makes it an unfair labor practice for the University administration to consult with any academic advisory group on matters within the scope of representation under certain circumstances. The Academic Senate, however, is specifically mentioned as not falling within the definition of an academic advisory group for the purpose of that section.

The Academic Senate is also handled separately with regard to the structure of representation units. Members of the Senate are given a choice of one statewide unit of all eligible members of the Senate or separate divisional (campus) units by Sec. 3579-e. The only other groups of University employees singled out in the unit language are police who are given a unit of peace officers only (Sec. 3579-f) and skilled craft workers who are allowed campus craft units so long as each campus or Laboratory craft unit contains all the skilled craft employees at each location (Sec. 3579-d).

Section 3562-1 defines managerial employees. Managerial employees are excluded from any representation unit. Department chairs who perform their duties primarily on behalf of members of the department are not deemed managerial employees simply because of those duties. The University of California allowed chairs to vote at the three campuses where Senate unit elections were conducted. In contrast, in the California State University System faculty unit election, chairs cast challenged ballots. The ultimate placement of chairs in or out of the faculty unit was decided by the parties as they bargained the first CSU faculty unit contract in the spring of 1983. (*Editor's note*: Article 1, ***Recognition***, of the Agreement between the CSU and California Faculty Association provides that 12-month chairs may be excluded from the bargaining unit if they meet certain criteria. This has resulted in roughly 200 chairs being excluded from the systemwide faculty unit of 19,000 employees.)

Students

Students are mentioned in HEERA in two categories, their role as potential employees and their role as education consumers. Section 3561-f empowers PERB to find that students whose employment is contingent on their student status are employees only if the services they provide are unrelated to their educational objectives or if the educational objectives are subordinate to the services they perform. The first unfair labor practice charge filed against the University under HEERA (SF-CE-1-H) involved housestaff and the language in Sec. 3561-f.

Shortly after the effective date of HEERA, July 1, 1979, the University administration began steps to remove housestaff from dues check-off on the theory that housestaff were not employees within the meaning of the statute because of their student status and, thus, not eligible for employee organization dues deduction because they were not employees. The Physicians National Housestaff Association filed the ULP charge with PERB on July 20, 1979. Ten days of hearing were conducted in October. The Union of American Physicians and Dentists was allowed to join PNHA in protesting the University's action. The California Medical Association was allowed to file a brief in support of the PNHA position and the Association of Medical Colleges received permission to file a brief on behalf of the University's position. The administrative law judge's proposed decision found housestaff to be student employees whose services were subordinate to their educational objectives. Since housestaff were excluded from HEERA's coverage, PNHA was not entitled to check-off for its organizational dues.

On February 14, 1983, PERB Chairman Gluck and Member Jaeger joined Member Tovar in a decision that adopted the findings of fact in the ALJ's proposed decision but reversed the conclusions of law. The Board decision found that the educational objectives of the residency program were subordinate to the delivery of services by housestaff. The decision is being appealed to the California State Court system by the University.

Students, as consumers, are given limited rights to participate in the bargaining process for student service and academic personnel (Sec. 3597-a-d). A student representative and an aide are entitled to receive written notification of all issues under discussion and access to all documents exchanged between the parties, to be present at all bargaining and mediation sessions, to comment at reasonable times during the bargaining, and to comment to the mediator at reasonable times on impasse issues. The student representative and aide are bound by the same rules governing confidentiality that are adopted by the University administration and the exclusive representative. Violation of the confidentiality of the negotiating process terminates the student involvement. The student representative is chosen by the official student body association or by direct student election in the absence of an official student body association. A student representative did participate in the one Senate unit that bargained a contract, but controversy arose over student efforts to participate in police bargaining.

Supervisors

HEERA grants limited rights to University supervisory employees. Supervisors may organize and meet with the University administration. Supervisors do not enjoy exclusive representation and discussions with management do not lead to bilaterally negotiated contracts. Further, supervisory employees may not represent non-supervisory employees in grievances or at the bargaining table and supervisors may not participate in rank and file employee contract ratification activity (Sec. 3580-1). Supervisory employees are entitled to meet and confer with management but, for supervisors, that only means that the administration must consider as fully as it deems reasonable whatever presentations are made before determining a policy or a course of action (Sec. 3581.5). Supervisory employees may not bring any matter to impasse.

HEERA currently allows the issue of organizational security to be bargained by the parties but it limits the strongest form of organizational security to maintenance of membership (Sec. 3583). The State Act (SEERA) started with similar language but was amended to allow an agency shop as the strongest form of organizational security. Eighteen of the 20 state contracts now contain agency shop clauses of one kind or another, which were all agreed to by Governor Brown shortly before he left office. Unions have announced plans to seek amendment of HEERA to parallel the law for state employees.

HEERA provides for public notice but it stops far short of any requirement for "sunshine" bargaining. Section

3595 requires the initial proposals of the parties to be presented at a public meeting and to become public documents. Bargaining cannot begin until the public has had an opportunity to express itself. After the public's expression, if any, the University must adopt an initial position, which may include changes from its original proposal based on the public's comments. Any new issue that arises during the bargaining is to be made public within 24 hours. With limited bargaining experience under HEERA to date, the interest of the public in the University of California bargaining has been nonexistent.

Shortly after HEERA was signed into law, Donald Wollett called it "the most thoughtful of many statutes that made collective bargaining available to employees of publicly funded higher education institutions." According to Wollett, "the statute deals in a responsive way with most of the problems which are unique to the way higher education systems are structured and governed. Some of its responses may not be adequate; they may in some instances be mistaken; but they are informed responses. . . ." Time and future studies may prove him correct. HEERA is definitely different. Whether it is better than other public sector bargaining statutes is an open question.

The Regents took a neutral position as HEERA was in its final stages of legislative action. The Regents had opposed earlier efforts at public sector bargaining bills and earlier drafts of HEERA. The University administration considered HEERA in its final form as a reasonable and balanced statute. It was felt that the final version of the law provided assurances that collective bargaining within the University of California would:

- be consistent with the University's independent status for the purpose of academic freedom and excellence;
- allow the University to meet its responsibilities to the people of the State and to its students;
- support the academic and research mission of the University;
- permit effective participation by employees in decision-making about their working conditions; and
- fully support the collegial approach to academic governance, including the governance role of the Academic Senate.

Therefore, the University withdrew its previous opposition to HEERA. Experience will tell whether the University administration's assessment of HEERA's protections were warranted.

ELECTIONS

PERB conducted elections on three campuses for Academic Senate units and a peace officers' systemwide unit. The first election took place on the Berkeley campus in the spring of 1980. The irony of the members of the Academic Senate being the first group of University employees to vote on representation was not lost on many employees. Perhaps, with all of the protections on governance supposedly within the statute, the members of the Senate felt they had little to lose by attempting to organize. The "no representation" choice was successful 532 to 477. More than 500 members of the Berkeley Senate failed to return their mail ballots.

The other two campuses, UCLA and Santa Cruz, required runoff elections before their results were complete. In November 1980, none of the three choices at UCLA—the American Federation of Teachers, the Faculty Association, and no representation—received a majority. In February 1981, the "no representation" choice defeated the Faculty Association 824 to 780. More than 630 eligible faculty members failed to participate in the UCLA runoff election.

At the Santa Cruz campus, the pattern was the same but the results were different. In November 1980, an inconclusive election was conducted among the AFT, Faculty Association, and no representation. In February 1981, the Faculty Association was elected the first exclusive representative within the University when it defeated the "no representation" choice 109 to 91. Ninety-one Senate members failed to participate in the runoff balloting.

Police Bargaining

The peace officers' unit voted in the summer of 1980. In August, PERB certified the Statewide University Police Association as the exclusive agent. The independent union won 102 to 39. The University administration challenged the votes of any sergeants who voted but the number of challenged ballots were insufficient to affect the outcome. SUPA needed 101.5 votes to win. It received 102 votes. Some 75 officers failed to vote. Subsequently, PERB decided, in a unit modification procedure, that sergeants were supervisory employees. (*Editor's note:* The issue of supervisory status for sergeants was not appealed by UC. In July 1981, SUPA filed a unit modification petition requesting the addition of sergeants to the established unit at the California State University. In a recent PERB decision the Board decided, with one member dissenting, that sergeants at the California State University were not supervisory and that they rightfully belong in the peace officers unit. The CSU asked for reconsideration and was denied by the Board. The first contract with the public safety officers was negotiated in 1982. Sergeants will be included as unit members in future negotiations.

Although SUPA was certified in August 1980, the union did not submit a list of demands to the University until late June 1981. The parties began to bargain even though the union had missed the May 1 statutory starting date for negotiations in situations where there is no contract. The parties reached agreement on July 1, 1982 on a brief pact that covered the 1981–82 fiscal year.

On July 9, 1982, bargaining began on a proposed agreement for the 1982–83 fiscal year. This bargaining round went through mediation and fact-finding. In early April 1983, it remained unsolved.

The University brought an eight-member team to the police bargaining, with a ninth person serving as chronologer. The Director-CBS served as spokesperson. The nine campus chiefs chose three chiefs to sit on the table team, originally the chiefs at Riverside, Santa Barbara, and Santa Cruz. A retirement and two subsequent transfers of chiefs led to the Davis, Santa Barbara, and Santa Cruz chiefs sitting on the table team at the time of the fact-finding. A personnel manager (Irvine), two labor relations officers (Davis and one of the Laboratories), and a representative from the systemwide office of Academic and Staff Employee Relations completed the table team. A senior analyst from the CBS office served as chronologer.

The parties agreed to a ground rule allowing observers to attend the bargaining sessions. Management observers attended most bargaining sessions. In addition to the table team and the observers, a committee of CBOG members from campuses not represented on the table team was created to act as an oversight committee. Most of the oversight committee members were negotiators with higher education or public sector bargaining experience gained outside the University. The final report of the oversight committee is expected to assist future University table teams and bargainers.

Police bargaining also became embroiled in a controversy over the desire of the students to participate. The Student Body Presidents' Council approached SUPA and the University administration with a request to participate in the police bargaining. The union agreed to allow the students to participate. The University disputed the students' claim to access to the police bargaining. The students brought the issue to PERB for resolution. A PERB Administrative Law Judge's proposed decision that police provided a service to students but were not student service personnel was adopted by the Board. PERB agreed with the University's position that police are not student service personnel within the meaning of Section 3597-a.

Senate Unit Bargaining

Bargaining in the Santa Cruz Academic Senate unit fared better. The process began in the fall of 1981. Since the Santa Cruz bargaining involved members of the Academic Senate there was no question about the legitimacy of student involvement in this bargaining. A student representative was chosen and did have the oppportunity to participate in the Santa Cruz meeting and confering. After several months of both formal and informal meetings, a tentative agreement was reached in May 1982. Two additional clauses were added in June 1982, and the proposed MOU was ratified by the Faculty Association soon thereafter. Concurrence by the University administration was delayed several months to allow consideration of the proposed contract by the Academic Senate, but the administration did complete the concurrence process early in 1983.

In bargaining at Santa Cruz, the University used a four-person table team. The spokesperson was the campus labor relations/personnel official. He was joined by a campus academic administrator, the Coordinator of Collective Bargaining Services from the CBS systemwide office, and a member of the Academic and Staff Employee Relations Office from systemwide. The table team met with and was supported by a larger team, which included the Academic Vice Chancellor from Santa Cruz, the Vice Chancellor for Faculty Relations at UCLA, an Assistant Vice Chancellor from Davis, and the Directors of Academic and Staff Employee Relations and Collective Bargaining Services.

Other PERB Units

In October 1982, PERB established 15 units for the University. In December, two additional non-Senate academic units were decided. Petitions for Certification and Requests for Recognition are pending in five more campus skilled crafts units. The charts compare the current unit and agent situation between the University of California and the California State University System.

The June 1983 election resulted in the establishment of five University-wide units in addition to the police situation and eight campus-based units with exclusive agents (see Table I on page 00 for a break-down of the different units' choices):

1. Librarians (400) American Federation of Teachers
2. Nurses (4,420) California Nurses Association

3. Clerical (19,350) American Federation of State, County and Municipal Employees
4. Service (6,300) AFSCME
5. Patient Care Technical (4,100) AFSCME
6. Crafts UCB/LBL (240) Alameda County Building Trades
7. Crafts UCSF (55) San Francisco Building Trades
8. Crafts UCLA (325) Operating Engineers #501
9. Crafts UCR (40) #501
10. Crafts UCI (80) #501
11. Crafts UCSB (50) #501
12. Crafts UCSD (120) #501
13. Printing Trades (95) Printing Trades Alliance

UNIVERSITY OF CALIFORNIA
BARGAINING UNITS
University-Wide Units

Unit	Exclusive Agent	Approximate Number of Employees
Police Officers	Statewide University Police Association (SUPA)	200
Librarians	American Federation of Teachers (AFT)	400
Nurses	California Nurses Association (CNA)	4,420
Patient Care Technical	American Federation of State, County and Municipal Employees (AFSCME)	4,100
Service	AFSCME	6,300
Clerical	AFSCME	19,350
SUBTOTAL		34,770
	Campus-Based Units	
UCSC Academic Senate	Faculty Association	290
UCB/LBL Crafts	Alameda Building Trades	240
UCSF Crafts	SF Building Trades	55
UCLA Crafts	Operating Engineers #501	325
Printing Trades	Printing Trades Alliance	95
UCR Crafts	#501	40
UCI Crafts	#501	80
UCSB Crafts	#501	50
UCSD Crafts	#501	120
SUBTOTAL		37,065
	Elected No Exclusive Representation Status	
UCB Academic		1,500
UCLA Academic Senate		2,200
LLNL Crafts		265
LLNL Technical		1,655
LLNL Service		460
LLNL Professional Scientists and Engineers		2,750
UCD Crafts		200
University-Wide Technical		4,100
University-Wide Residual Patient Care Professional		1,525
TOTAL		51,720

There is little direct comparison between the two public higher education systems in California. CSU has nine units. Each unit is systemwide and is represented by an exclusive agent (see Table II on page 00). All of the HEERA-eligible CSU employees have been placed in one unit or another. In contrast, only about 70 percent of the University of California HEERA-eligible employees have been placed in units. Only 10 of the PERB units in UC are university-wide. There is a potential for perhaps as many as two dozen more campus or Laboratory units within UC. UC has 17 exclusive representatives, seven in university-wide units and 10 in campus units. Elections in the non-Senate Instructional and Research units will not be conducted until late fall or mid-winter 1984.

Information Campaign

The University of California made a controversial decision to develop an information campaign. The Regents voted 11 to 9 in the fall of 1982 to fund a Communications Program for Collective Bargaining Elections. Nearly $160,000 was appropriated from non-State funds for the campaign, most of it to cover the cost of preparing and distributing literature.

The communications program is viewed by the University administration as a continuation of its on-going employee communications efforts. Several employee organizations have complained that the University has embarked on an anti-union campaign. The administration has argued that it will accept and respond in good faith to whatever decision its employees make when they vote in representation elections. The administration merely wishes its employees to be aware of its views about the disadvantages of exclusive representation in the context of the University of California. Neither the State of California nor CSU engaged in any formal information campaign during the organizing and elections they went through following the passage of SEERA and HEERA.

CALIFORNIA STATE UNIVERSITY
BARGAINING UNITS

Occupational Group	Agent	Approximate Number of Employees
Physicians	Union of American Physicians and Dentists	200
Health Care Support	California State Employees Association (CSEA)	340
Faculty	California Faculty Association (AAUP, CSEA, CTA/NEA)	19,300
Academic Support	United Professors of California (AFT, AFL-CIO)	1,400
Operation and Support Services	CSEA	2,050
Skilled Crafts	State Employees Trades Council (LIUNA, AFL-CIO)	850
Clerical and Administrative Support Services	CSEA	7,400
Public Safety Officers	State University Police Association (SUPA)	190
Technical and Support Services	CSEA	3,100
TOTAL		34,830

Bargaining Councils

In planning for what might occur after the elections in May and June 1983, the University established bargaining councils. These structures will be active in the bargaining if unions are successful. The councils represent a much more formal structure than existed when the University was concerned with only one exclusive representative for police.

Initial planning for police bargaining began to take specific form when campus police chiefs and the campus administrators to whom they reported met with campus labor relations personnel and Systemwide representatives. This group developed a fairly detailed list of goals and strategy statements that represented what the campus people wanted to see happen and what they wanted to avoid during police bargaining.

These people decided the University should develop an overall strategy for SUPA bargaining which would lead to harmonious relationships and a fair contract. It was felt that maintaining the status quo, campus practices and staff personnel policy flexibility could be accomplished at the same time that police practices could be standardized. The group wished to avoid a grossly adversarial process; to avoid blanket references in the MOU to the Staff Personnel Policy Manual, the Police Rules and Regulations, or state and federal statutes; to avoid MOU clauses which did not meet campus needs; and to avoid MOU clauses which created conditions significantly different from those enjoyed by other employees. Well-meaning though these goals might have been, they suffered from a certain lack of internal consistency and they were predicated on a fairly unrealistic view of what might be possible.

Under the University administration's approach to HEERA, the initial positions to be taken during negotiations were to be developed by the Assistant Vice President (Academic or Staff and Management Personnel) responsible for policy subsequent to review by campus and Laboratory officials. The Assistant Vice President—Affirmative Action Planning and Review also was responsible for commenting on all initial bargaining positions before the report to the Management Advisory Committee on Employee Relations was developed in final form.

The Assistant Vice President for Staff and Management Personnel convened a small work group which consisted of the Vice Chancellors of Business and Finance, two Vice Chancellors of Staff Personnel from the campuses and two campus police chiefs, one of whom was serving as the Coordinator of Police for the nine campus departments. This work group was guided by four principles as a framework for police bargaining evolved. The first principle was an effort to maintain the current flexibility to manage operations and to direct the work force. Second was to continue rights and benefits then being provided to employees. Third was to allow binding arbitration as a means of resolving rights disputes that arose under the interpretation or application of the contract. Fourth was a desire to keep work rules and discretionary benefits outside the agreement.

The framework presented to MAC for its discussion and recommendation to the President included a section on what specific provisions of the Staff Personnel Manual should be bargained into the contract together with standard labor agreement clauses (recognition, checkoff, no strike, savings, management rights, waiver, etc.). The framework's approach to grievances and arbitration will be detailed below in a comparison between the University of California and the California State University's approaches. The police framework did not contain any proposed contract language but it did state that current Staff Personnel Policies to be included in an agreement needed to be rewritten to eliminate administrative procedures, advice and direction to supervisors and statements expressing management's discretion.

The framework also addressed the problem presented by the *Police Rules and Regulations*, the official, but seldom used title, of a compilation of police rules and regulations and Business and Finance Bulletins. The book is generally referred to by the color of its cover—"the blue book" in 1979, "the gold book" in 1983. Some of the provisions in the gold book deal with bargainable matters which should be considered for inclusion in a contract. The framework concluded that uniform allowance, equipment replacement allowance, citizens' complaints and per diem reimbursements should be incorporated into the agreement. Beyond the incorporation of specific sections of the Rules and the Business and Finance Bulletins, the framework proposed no general reference to these documents or to statutes or personnel policies. Instead, the framework recommended that actual language be proposed for each clause in the MOU in an effort to create a self-contained document and limit the proclivity of a future arbitrator of the police contract to wander.

Since the police unit includes peace officers at the nine campuses and the Lawrence Laboratories, the framework proposed that variations between the Laboratory and the campus police be removed and that the MOU reflect common provisions for all unit members.

MAC discussed the framework proposed by the Assistant Vice President's work group and recommended it to the President. The framework did not represent either the University's initial position in bargaining or its final position. The framework generally represented what University management felt would be an appropriate result of the police negotiations. The University's bottom line emerged in bits and pieces as police bargaining wore on.

The chief negotiator remains convinced that it is dangerous to begin negotiating any MOU without management first having a clear idea of what it is willing to accept. If a union goes through mediation and factfinding the first time it bargains, as the police union did, there will be pressure on the union to invoke impasse in future bargaining, especially if the union officers or its rank and file members think substantial concessions were gained from management as a result of the use of the impasse procedures. Until factfinding is complete, it will not be possible to assess the situation fully.

In the spring of 1983, the University established three bargaining councils to serve in an advisory capacity for health care units, general staff employee units (including the campus skilled crafts units) and academic units. Lawrence Livermore Laboratory bargaining will be monitored by a similar structure involving Laboratory and Systemwide Administration personnel. The bargaining councils will develop frameworks in any of the units where employees elect exclusive agents. The council frameworks will then be presented to MAC for discussion and recommendation to the President. After developing the frameworks, the councils will continue to function during the bargaining as a communicating device between the bargaining teams and the campuses and Laboratories and as a sounding board where new ideas or issues can be discussed if or as they arise.

Perhaps the most difficult assignment for the bargaining councils will be to solve the potential problems that specific campus or Laboratory wage and working conditions present in a systemwide unit. The general principles supporting bargaining councils include the responsibility to develop a framework for bargaining which preserves local determination of campus-specific issues while being responsive to the need for effective systemwide coordination and to make every effort to maintain local flexibility. The centralizing tendencies of bargaining and the systemwide units run counter to the decentralized University of California administrative structure. Whether the University will be forced to try a two-tiered approach to bargaining in order to preserve campus flexibility will probably be determined by whatever stance the exclusive agents take in developing their bargaining demands.

Grievance, Arbitration and Contract Administration

It is a belief generally held by members of the University of California administration that the University has a less centralized administrative structure when compared with the California State University System. If this is correct and bargaining does exert centralizing tendencies, then the University of California will have to approach bargaining with some unusual contract provisions if its decentralized administrative structure is to survive the intrusion of exclusive agents.

As mentioned earlier, CSU and UC share one common exclusive representative, the Statewide University Police Association. Because of the structure of the units (CSU skilled crafts are in a systemwide unit, UC skilled crafts will be in campus units) the police unit is the only unit where the two systems will share a similar unit and the same exclusive agent for quite some time. The California State Employees' Association, which represents CSU employees in the Service, Clerical and Technical units, decided not to compete in the University of California elections conducted in June 1983. Although the systems may share some similar unit configurations, a common exclusive agent will not be possible.

A look at the approach to grievances and arbitration in police bargaining by the two systems uncovers two different approaches. HEERA Sec. 3567 provides:

> Any employee or group of employees may at any time, either individually or through a representative of their own choosing, present grievances to the employer and have such grievances adjusted, without the intervention of the exclusive representative; provided, the adjustment is reached prior to arbitration pusuant to Section 3589, and the adjustment is not inconsistent with the terms of a written memorandum then in effect. The employer shall not agree to resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution, and has been given the opportunity to file a response.

The California State University System negotiated a five level grievance procedure in its police contract. Level one is an informal review. Level two is a formal review with the campus Director of Public Safety. Level three is a review by the campus President. Level four is a systemwide review at the Office of the Chancellor. Level five is the arbitration step which can only be invoked by the exclusive representative. At level two the Director of Public Safety must conduct a meeting before providing a written response. At levels three and four meetings may be held before the CSU's written response is given but the contract does not require a meeting before an answer is given to the grievant(s).

In contrast, the University of California has proposed a flatter grievance and arbitration provision for its police contract. The University's proposal calls for an informal campus level review which, if unsuccessful, is followed by a formal review with a written response. If requested, a meeting would be held before the written response is presented. If the union is not satisfied with the campus or Laboratory response, it can file for arbitration. The University is relying on coordination and consultation between the campuses, Laboratories and Systemwide Administration to iron out any difficulties in a location's written grievance response without the need for a system level review. The centralized and decentralized approaches to grievances and arbitration will require different contract administration techniques and should provide a fertile field for study.

CONCLUSION

By July 1984, events at the University of California had outpaced this chapter. In October 1983, the University administration was reorganized. The Vice President-Academic and Staff Personnel Relations position was eliminated. Bargaining responsibility ultimately rests with the Senior Vice President for Administration. The Management Advisory Council has been replaced by a University Labor Relations Council. The Collective Bargaining Operations Group has been replaced by a Labor Relations Group. A new Assistant Vice President for Labor Relations began work in March of 1984. The Santa Cruz faculty contract has been extended for 1984–85. The Berkeley, San Francisco, Los Angeles, Riverside, Ervine, and San Diego skilled crafts contracts have been negotiated. A re-opener in the police contract has been settled. Agreement is near in the clerical, service, patient care technical, nurse, and librarian units. Bargaining in the non-senate in academic instructional unit has just begun.

The bargaining activity within the University of California has not yet reached a point, however, where definite conclusions can be drawn. The University has embarked on a course that differs in several ways from what others before us have tried. This should provide researchers with an opportunity to decide whether the University of California approach is unique, feasible, a distinction that does not lead to any long-lasting or substantial differences, or *sui generis*. Before others follow this path, it might be wise to assess the initial outcomes of our efforts. Different may always be different, but it may not always be better.

REFERENCES

Agreement between the Statewide University Police Association and the California State University System (Peace Officer Unit), July 1, 1982 – June 30, 1984.

California Legislature, *The 1983–84 Budget: Perspectives and Issues*, (Sacramento, CA), January, 1983.

Higher Education Employer-Employee Relations Act (Berman Act), Sec. 3560 of Division 4 of Title 1 of the Government Code, *et seq.*, September 13, 1978.

Archie Kleingartner, "Unions and Academics," *Trade Unionism in the United States*, James L. Stern and Barbara D. Dennis, eds. (Madison: Industrial Relations Research Institute, University of Wisconsin, 1981).

California Public Employment Relations Board, Administrative Law Judge and Board decisions, Housestaff and Student Participation in Police Bargaining issues, San Francisco PERB Office.

The Regents of the University of California, *Bylaws and Standing Orders*, (Berkeley, CA).

The Regents of the University of California, *Facts*, (Berkeley, CA), November, 1981.

Donald H. Wollett, "HEERA: A Look at New York Experience and California Prospects", *CPER Review 39* (December, 1978).

Collective Bargaining with Public University Employees: Before and After Enabling Legislation

By Sandra L. Harrison

Is there any advantage for a public university to recognize an exclusive employee organization for the purpose of collective bargaining when there is no statutory or legislative requirement to do so? The answer to this question could influence the labor relations policies of higher education governing boards in the 25 states where no legal framework exists for collective bargaining in the public sector. My purpose is to discuss public sector collective bargaining in four-year institutions in Illinois before the 1983 enactment of enabling legislation. The chapter will also highlight the major issues that must be considered in formulating collective bargaining policy in the absence of a statutory mandate. Forty states, the District of Columbia, and the Virgin Islands now have statutes or executive orders that provide legal frameworks for collective bargaining covering some or all of their employees. Only 26 of these states have enabling legislation covering faculty and other higher education employees. While the majority of the collective bargaining statutes and executive orders were enacted in the 1970's, many states without legislation are now debating the efficacy of such legislation.

There are at least three reasons why a public university might choose to bargain with an exclusive representative in the absence of enabling legislation. There may be a *de facto* employee representative who demands collective bargaining and who has the muscle to call an effective strike if demands to bargain go unheeded. The university's governing board or the political powers governing the university, as a matter of public policy, may encourage collective bargaining. The university may perceive some advantage to bargaining collectively with employees.

THE ADVANTAGES OF VOLUNTARY BARGAINING

If collective bargaining is desirable, or inevitable, what are the advantages of recognizing an agent and commencing negotiations in the absence of legislation? Voluntary recognition of an employee organization may avoid the less desirable alternative of having this relationship legislatively mandated. For example, such action by the university may significantly reduce the political pressure felt by the legislature, if not to avoid enabling legislation then to permit exclusion of certain educational employees from coverage under a comprehensive statute. If legislation is inevitable, then policies and practices established before its passage may help shape the statutory framework. Joseph Garbarino advances the belief that the "more favorable" provisions applicable to the University of California system in California's Higher Education Employment Relations Act (HEERA) resulted from a decision of the Board of Regents of the University of California system to cooperate in developing a collective bargaining statute that would incorporate existing policy and relationships.[1] In contrast, the California State University Trustees reportedly refused to assist the legislature in developing a collective bargaining bill. As a result, the same statute treats the California State University differently, more in the traditional mode.

George W. Angell and Edward P. Kelley provide a useful discussion of the perceived advantages as well as disadvantages of voluntary bargaining.[2] The most common criticism of statutorily mandated collective bargaining is that the statutes are derived from the so-called "industrial model," which is not suited to the traditional governance structure of a university. Freedom to create a model tailored to the unique structure of the university may be the threshold motivation for voluntary recognition. Governing boards could benefit from a careful study of all elements of a model, with serious consideration given to obtaining input from employees and their representatives, resulting in a higher level of cooperation after adoption than might otherwise be enjoyed. Indeed, the recent studies of cooperative efforts in Japan suggest that significant benefits to both employer and employee may derive from collaboration.[3] Interference from governmental and other external agencies may be a mutual disadvantage to university administration and employees.

For example, labor boards are often criticized for their lack of understanding of academic issues, governance structures, and university traditions. Bargaining under governing board authorization can reduce the level of political involvement of the legislature, governor's office, and other statutory regulatory bodies.

Governing boards can establish bargaining regulations designed specifically for the academic community and can alter them as the need arises. Modification of a state statute or even executive order can be an arduous task, fraught with political obstacles often unrelated to the initial issue. Internal regulations that can be demanded easily allow greater room for experimentation and creativity.

Finally, the absence of a statutory foundation, and thus the absence of regulatory agencies, can in some ways actually improve the bargaining process. Each party is motivated to use persuasion in solving problems since no outside agency is available to intervene. There must be more emphasis on compromise and less emphasis on third party intervention. This self-reliance, arguably, can improve the relationship between the parties. The more successful the parties are in resolving their problems, the more adept they become at solving future ones. Parties with a track record of resolving issues themselves develop mutual trust and respect. Continued reliance on third parties inhibits the parties from developing the necessary skills to settle contractual disputes. It may also create the belief that the parties cannot solve their own problems, or worse, that bargaining isn't finished until a third party intervenes.

THE DISADVANTAGES OF VOLUNTARY BARGAINING

Voluntary recognition of an exclusive bargaining agent in the absence of enabling legislation may be unwise. For example, where there are no regulatory agencies, the lack of conflict resolution machinery may be a serious detriment to both parties when persuasion and compromise fail to resolve important issues. Similarly, the absence of a labor board may make contested issues such as scope of bargaining or unit determinations difficult to resolve. Overall, the most serious disadvantage is the potential to misuse the unilateral power of the governing board to establish collective bargaining policies. If bargaining regulations are adopted in secrecy without meaningful input from employee representatives, the entire relationship may be doomed, regardless of the substantive value of the policies themselves. A governing board that promulgates broad or vague regulations can encourage poorly planned bargaining. Alternatively, narrow and overly restrictive board policies may frustrate employee organizations and spur greater interest in the passage of collective bargaining legislation. The difficult task of the governing board is to create policies that will regulate the conditions under which both parties can reach agreement while preserving the governing authority of the board. These policies must take into account procedures for recognition, guidelines for the negotiation process, administration of the contract, and procedures for conflict resolution.

BARGAINING WITHOUT LEGISLATION

What are the issues to be addressed once the decision is made to bargain voluntarily in the absence of enabling legislation? When the governing board's decision to enter into collective bargaining is based on a philosophical belief in the process, the objective may be to create a bargaining environment that is satisfactory to board members, campus administrators, employees, and employee representatives. Alternatively, the objective may be to avoid the enactment of disadvantageous legislation. As stated previously, should collective bargaining take place voluntarily, the pressure public employees and their unions bring on the political process to seek legislative improvements in their working conditions may be greatly diminished.

How should the governing board proceed to establish its collective bargaining policies? Initially, the board will need to familiarize itself with the basic concepts and prevailing philosophies of collective bargaining. Legislation from other states, proposed legislation (if appropriate) in the board's own state, legislation and policies promoted by the prevalent unions affiliated with the campus(es), and the bargaining experiences at similar institutions should be studied carefully. Next, specific issues should be identified to include in the regulations or to be addressed by the board outside of the formalized policy. The board should provide opportunities for extensive discussion of these issues with campus administrators, employees, students, and interested public and state officials. Political implications, such as the potential impact on the appropriation process, must be carefully examined and weighed regardless of the amount of pressure applied by interested parties. Staff from the Governor's office, key legislators, and representatives from other systems or campuses in the state should be consulted. The process of studying all issues should be given enough time to ensure complete understanding of all issues. The board must obtain as much information as possible to make an informed judgment. It must be clear from the outset, however, that such issues are not being negotiated. The ultimate decisions must be made by the board alone.

The board's deliberations may result in the formulation of specific provisions to be included in the regulations.

Alternatively, the board may decide that certain issues are best left to be considered informally, on a case-by-case basis. A board considering development of internal regulations governing collective bargaining should consider the following issues.

Statement of Purpose

The board's precise goals and expectations for collective bargaining must be articulated. General rhetorical comments should be avoided because they can only create disputes between the parties and are not amenable to assessment. It is useful to foster understanding and realistic expectations through dialogue with the employee representative before articulating a statement of purpose.

Unit Determination

Consideration should be given to whether the unit should be system-wide, whether it should include part-time or temporary employees, or whether it could be constructed in a more advantageous way. The traditional test to apply is whether the employees in the proposed unit share an identifiable community of interest. Generally, employers look to increase the size of units to promote efficient and effective dealings with the employees. Fortunately, this goal frequently coincides with the union's desire to have the largest unit it can reasonably win in an election. In some cases, the procedures for determining appropriate units are merged with the procedures for petitioning for recognition. Separation of these procedures avoids confusion of the two issues and allows the employer to make the initial unit determination without the pressures of a representation petition.

When considering whether to include a particular classification or group of employees in a proposed unit, first assume for the sake of analysis that those employees will be represented in a separate unit if inclusion in the proposed unit is denied. Then the board should consider whether it is more reasonable and advantageous to include them in the proposed unit, or whether there are substantive reasons to bargain with them separately. Consider construction of units contrary to traditional patterns if greater efficiencies can be realized. For example, combining various trades into a single unit may significantly enhance flexibility and efficiency of plant maintenance operations, even though such crafts have traditionally been separated. Finally, consider arriving at unit determinations for an entire campus or system before receiving any petition for representation. The board may make tentative unit determinations subject to further review or may choose to adopt publicly a formal master plan of all possible units. If legislation is adopted in the future, then it is likely to include a "grandfather clause" requiring continued recognition of units formed before the legislation.

Scope of Bargaining

One of the most significant advantages of creating nonstatutory collective bargaining policy is the opportunity to define and limit the scope of bargaining. The scope includes those subjects determined to be bargainable by the National Labor Relations Board, state labor boards, and the courts.[illegible] The most successful approach is to face the issue squarely at the beginning of the collective bargaining relationship and hammer out a precise policy statement of the scope of bargaining with as many parameters and definitions as are feasible. This encourages time spent at the table to be focused on negotiating successfully defined permissible subjects of bargaining rather than on arguing over the meaning of general phrases. Both parties can begin with the same understanding and expectation of what is to be bargained.

A more traditional approach, which is not recommended, is modeled after the National Labor Relations Act. Simply put, it is to use the phrase "wages, hours, and other terms and conditions of employment." The parties, under this broad language, are free to negotiate the scope, or, as a last resort, they may seek board determination through adjudication of unfair labor practice charges made by either the board or the employee organization. The bargaining table is not the place to make a significant policy decision such as the scope of bargaining.

Election Procedures

A neutral third party should be designated to conduct the election, to avoid claims of bias or manipulation of the process. The board must determine the method of balloting, whether on site or by mail, who will be eligible to vote, whether absentee ballots will be provided, how challenges of eligibility to vote will be handled, procedures for tallying the ballots, and how the expenses of the election will be met. What will be the requirement to determine the outcome of the election: a majority of those eligible to vote or a majority of those who vote? If the election is systemwide, are the votes counted on each campus, or comingled and then counted? (An advantage of comingling is that each president can retain the fantasy that his or her campus did not support the union.)

Impasse Procedures

In considering whether third party intervention in the form of mediation or fact finding should be provided, the board must consider the positive and negative aspects mentioned earlier. The strength of the union should be assessed. If no impasse procedures are adopted and persuasion and compromise have failed to bring resolution to the bargaining table, the union may still have the ultimate weapon — the strike.

Grievance Procedures

What is the definition of a grievance? Who will make the final decision resolving a grievance? The board may choose to leave some or all of these issues to the bargaining process. One of the most significant decisions to be considered is whether final and binding arbitration will be allowed. If so, how will the arbitrator be selected? A compromise position would allow binding arbitration, but would restrict the authority of the arbitrator in certain matters. The arbitration procedure should be limited to the application and interpretation of the contract, precluding the arbitrator from adding to, subtracting from, or modifying the provisions of the contract. Arbitration of retention, promotion, tenure, and discharge decisions should be limited to procedural violations only.

Agency Shop

This issue should be decided upon applicable state law. If no state statute specifically provides for such an agreement, the board may have no basis for involuntary payroll deduction of the agreed upon amount. This is also a highly political issue, with all benefits accruing to the union and none to management. Once the issue has been approached, a broader question of the definition of "agency shop", "fair share", or "union security" must be met.

COLLECTIVE BARGAINING IN ILLINOIS WITHOUT LEGISLATION

The structure of Illinois higher education is most often described as a "system of systems". There are four separate boards that oversee the four-year state universities: The Board of Trustees for the University of Illinois; The Board of Trustees for Southern Illinois University; The Board of Regents for Illinois State University, Northern Illinois University, and Sangamon State University; and The Board of Governors for Chicago State University, Eastern Illinois University, Governors' State University, Northeastern Illinois University, and Western Illinois University. Thus there are four separate employers for the state universities.

CIVIL SERVICE BARGAINING

Until the end of 1983, collective bargaining had been conducted in Illinois universities without comprehensive enabling legislation. Illinois Revised Statutes, Chapter 24½, Section 36, created a State University Civil Service System and contains the usual provisions for open testing, classification, compensation, promotion, discharge, etc., all under the control of an appointed Merit Board. "Each employer covered by the University System shall be authorized to negotiate with representatives of employees to determine appropriate ranges or rates of compensation or (sic) other conditions of employment . . ." There are no statutory provisions for the usual mechanisms of collective bargaining; thus each employer or governing board is free to determine its own procedures and policy. All of the public universities bargain with some of their civil service employees, guided by their own policies and procedures.

The Illinois Board of Governors of State Colleges and Universities adopted labor relations regulations for civil service employees that provide for unit determination, representation procedures, the scope of negotiations, and contract management. Following is a brief summary of the major provisions of The Board of Governors' labor relations regulations.

Unit Determination

A bargaining unit may not include professional and non-professional employees, employees who are already included in another bargaining unit, or security personnel and other employees. The Board decides the appropriateness of each proposed bargaining unit, taking into consideration criteria including "(1) an identifiable community of interest; (2) the promotion of effective dealings and efficiency of operations; and (3) established relationship." Excluded are those in supervisory or confidential positions. Part-time employees have been allowed in a few units but are excluded from most.

Representation Procedure

Once the Board determines that a proposed bargaining unit is appropriate, a pre-election certification check is held to determine whether the employee organization represents at least 30 percent of the employees in the proposed unit. A secret ballot election is then held, requiring the agreement of the majority of the employees who vote for the organization to be certified as the exclusive bargaining representative. The Regulation also provides for intervenors and runoff elections.

Scope of Negotiations

The scope of negotiations includes, to the extent permitted by state law, wages, hours, and other terms and conditions of employment. Excluded are matters covered by the statutes and rules of the State University Civil Service System, (Chapter 24½) matters covered by the State University Retirement System, the Board's life and health programs, and matters of inherent managerial policy.

Contract Management

Collective bargaining agreements are not effective until ratified by the certified employee representative and then approved by the Board. The Executive Director of the Board is responsible for contract administration and the regulations require appointment of a contract administrator on each campus to handle the day-to-day administration of the agreements.

Issues not specifically provided for in the regulations have been addressed on a case-by-case basis. The Board of Governors of State Colleges and Universities has been engaged in collective bargaining with civil service employees for more than 10 years. Under their own regulations, the Board of Governors recognized and collectively bargained with approximately 20 different employee organizations representing civil service employees such as engineers, firefighters, police officers, building service workers, clerical workers, and groundskeepers. Most of the employee organizations represent employees on only one of the five campuses. There are no system-wide civil service units but there are two Chicago area units.

FACULTY BARGAINING

Before 1983, there was no statutory requirement in Illinois to bargain with non-civil service university employees. Of the four higher education boards governing four-year colleges and universities, only the Board of Governors has chosen to recognize voluntarily an agent representing faculty members. On March 18, 1976, the Board of Governors adopted regulations providing for recognition of an exclusive bargaining agent representing most full-time permanent academic employees. A referendum on collective bargaining was mandated.

Those eligible to vote were asked, "Do you want collective bargaining and to be represented by an employee organization for system-wide collective bargaining?" The regulations required a system-wide unit including all academic employees at the five campuses holding full-time appointments with rank, as faculty, librarians, counselors, and learning services staff. Included within the regulations was a statement of policy, a section of definitions, procedures for the referendum and the election, an assurance of the right of free speech, procedures for bargaining, the scope of negotiations, ratification and implementation requirements, the role of student participants, and other miscellaneous provisions. A sizeable majority of the eligible academic employees voted to support collective bargaining. The ballots from each of the five campuses were comingled and then counted; therefore, it was impossible to determine the level of support on each campus.

The permissible subjects of bargaining under the regulations included salaries, compensable fringe benefits, leaves without salary, procedures for staff reduction, grievance procedures, dues checkoff, bulletin boards, use of campus facilities by the exclusive bargaining agent, and a no-strike clause. In 1978, the Board expanded the scope to include assignment of duties and procedures for evaluating and recommending employees for retention, promotion, and tenure.

ILLINOIS LEGISLATION

In July 1983, the Illinois General Assembly passed House Bill 1530, entitled "An Act to establish the right of educational employees to organize collectively, to define and resolve unfair practice disputes, and to establish the Illinois Educational Labor Relations Board in connection therewith." House Bill 1530 covers approximately 220,000 public employees of educational institutions. At the same time, the General Assembly also approved Senate Bill 536, which is a comprehensive collective bargaining bill for 209,000 other public employees. Senate Bill 536 establishes two labor boards. The Illinois State Labor Relations Board encompasses all state and local government of the City of Chicago and Cook County. The Illinois Local Labor Relations Board is responsible for the employees of the City of Chicago and Cook County. On September 23, 1983, Governor James R. Thompson signed both pieces of legislation but used the amendatory veto granted by the Illinois constitution, to make certain changes. These measures, with the Governor's amendatory veto recommendations, have been returned to the General Assembly for its consideration of the changes.

Following are highlights of House Bill 1530 with the Governor's changes and, where applicable, comments comparing the statute with the policy of the Board of Governors.

Definition of Employee

Coverage is extended to any individual employed full or part-time, except supervisors, managers, confidential employees, short-term employees, students, and part-time academic employees of community colleges. This definition is considerably broader than the definition in the Board of Governors' regulations for both faculty and civil service.

Unit Determination

Consideration is given to historical patterns of recognition; community of interest, including employee skills and functions; degree of functional integration; interchangeability and contact among employees; common supervision; wages, hours, and other working conditions; and the desires of the employee.

Scope of Bargaining

This provision contains the standard "wages, hours, terms, and conditions of employment" language. The Governor's veto message adds a strong management rights clause that precludes from the scope of bargaining "functions of the employer, standards of services, its overall budget, the organizational structure, and selection of new employees and direction of employees."

Recognition

Employers may voluntarily recognize a labor organization if it appears to represent a majority of employees in the unit. Recognition can also be granted by an election, conducted by the labor board, requiring a majority of ballots cast in order to gain recognition. This is essentially the same as the Board of Governors' policy for civil service employees, but the requirement of a majority of those voting is a much lower standard than the Board applied to its faculty. The Board policy required a majority of those eligible to vote.

Impasse

The statute requires notice to the labor board if an agreement has not been reached 90 days before the start of the school year. If the parties are at impasse within 45 days of the start of the school year, either party or the labor board may initiate mediation. If no agreement is reached within 15 days of the start of the school year, the labor board shall invoke mediation. The Board of Governors' policy has no provision for impasse and had successfully resolved all of its differences at the bargaining table without the assistance of a third party.

Strikes

Strikes are prohibited, unless (1) the employees are represented by an exclusive bargaining representative; (2) mediation has been unsuccessful; (3) at least five days have elapsed after a notice of intent to strike has been given; (4) the collective bargaining agreement, if any, has expired; and, (5) the employer and the employee representative have not mutually submitted the unresolved issues to arbitration. Before this legislation, public employee strikes were illegal and subject to injunction.

Unfair Labor Practices

There are the standard unfair labor practices provisions to protect the bargaining process. The Governor's veto message recommends that the labor board may defer resolution of an alleged unfair labor practice that involves interpretation of application of the terms of a collective bargaining agreement. The Board of Governors' regulations did not include unfair labor practices.

Grievance Resolution Procedure

Each collective bargaining agreement must contain a grievance resolution procedure and shall provide for binding arbitration. The governor has proposed that the agreements also include a statement prohibiting strikes for the duration of the agreement. Binding arbitration was not required the Board of Governors' regulations, but most of the collective bargaining contracts that were negotiated contained such a provision and all of the negotiated contracts contained a no-strike clause.

Fair Share

Collective bargaining agreements may include a provision requiring employees who are not members of the organization to pay a fair share fee for services rendered. Agency shop provisions were not included in any of the Board of Governors' agreements.

CONCLUSION

A university may gain significant benefits by developing its own policy permitting collective bargaining with its employees in the absence of a collective bargaining law. In this way, a university may be able to determine the bargaining units and the scope of bargaining and avoid the potentially disruptive impact of the decisions of a legislatively created board unfamiliar with colleges or universities. Indeed, if legislation is passed, previous unilateral decisions may be grandfathered in.

There is not enough evidence yet to determine whether the nature and quality of the labor-management relationship is any different under a policy voluntarily enacted or under a comprehensive collective bargaining statute. But, as the three other public university boards proceed to bargain with faculty and/or civil service unions, differences and similarities with the Board of Governors' experiment will prove to be interesting and instructive.

Endnotes

[1] Garbarino, J. "Proposition 13 and Faculty Organizing Under HEERA" *California Public Employee Relations 39* (1978). 23-32.

[2] Angell, George W. and Kelley, Edward P. *Faculty Bargaining Under Trustee Policy*. Washington, D.C.: Academic Collective Bargaining Information Service, 1979.

[3] See, e.g., Tanner Pascle, Richard and Athos, Anthony G., *The Art of Japanese Management*, New York: Simon & Schuster, 1981; and, Peters, Thomas J. and Waterman, Robert H., *In Search of Excellence*, New York: Harper & Row, 1982.

[4] See Naples, C. and Bress, J., *Collective Bargaining—Its Scope*, New York City: Practicing Law Institute, 1974.